

## **EXHIBIT 7**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

IN RE:

CHAPTER 11

CASE NO.

HIGHLAND CAPITAL 19-34054-  
MANAGEMENT, L.P. SGJLL

Debtor.

Confidential - Under Protective Order

REMOTE DEPOSITION OF  
MICHAEL PUGATCH  
Zoom Videoconference  
01/11/2021  
1:07 P.M. (EDT)

REPORTED BY: AMANDA GORRONO, CLR  
CLR NO. 052005-01  
JOB NO. 188591

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<p>1</p> <p>2 01/11/2021</p> <p>3 1:07 P.M. (EDT)</p> <p>4</p> <p>5</p> <p>6 REMOTE ORAL DEPOSITION OF MICHAEL</p> <p>7 PUGATCH, held virtually via Zoom</p> <p>8 Videoconferencing, pursuant to the</p> <p>9 Federal Rules of Civil Procedure before</p> <p>10 Amanda Gorrono, Certified Live Note</p> <p>11 Reporter, and Notary Public of the State</p> <p>12 of New York.</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1</p> <p>2 A P P E A R A N C E S: (Via Remote)</p> <p>3 PACHULSKI STANG ZIEHL &amp; JONES</p> <p>4 Attorneys for Debtor</p> <p>5 780 Third Avenue</p> <p>6 New York, New York 10017</p> <p>7 BY: JOHN MORRIS, ESQ.</p> <p>8 HAYLEY WINOGRAD, ESQ.</p> <p>9</p> <p>10 BONDS ELLIS EPPICH SCHAFFER JONES</p> <p>11 Attorneys for Jim Dondero</p> <p>12 420 Throckmorton Street</p> <p>13 Fort Worth, Texas 76102</p> <p>14 BY: JOHN WILSON, ESQ.</p> <p>15 BRYAN ASSINK, ESQ.</p> <p>16</p> <p>17 DEBEVOISE &amp; PLIMPTON</p> <p>18 Attorneys for HarbourVest</p> <p>19 919 Third Avenue</p> <p>20 New York, New York 10022</p> <p>21 BY: ERICA WEISGERBER, ESQ.</p> <p>22 M. NATASHA LABOVITZ, ESQ.</p> <p>23 EMILY HUSH, ESQ.</p> <p>24 DANIEL STROIK, ESQ.</p> <p>25</p>
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<p>1</p> <p>2 A P P E A R A N C E S: (Via Remote)</p> <p>3 KANE RUSSELL COLEMAN &amp; LOGAN</p> <p>4 Attorneys for CLO Holdco Limited</p> <p>5 Bank of America Plaza</p> <p>6 901 Main Street</p> <p>7 Dallas, Texas 75202</p> <p>8 BY: JOHN KANE, ESQ.</p> <p>9</p> <p>10 HELLER, DRAPER, HAYDEN, PATRICK, &amp; HORN</p> <p>11 Attorneys for The Dugaboy Investment</p> <p>12 Trust and the Get Good Trust</p> <p>13 650 Poydras Street</p> <p>14 New Orleans, Louisiana 70130</p> <p>15 BY: DOUGLAS DRAPER, ESQ.</p> <p>16</p> <p>17 LATHAM &amp; WATKINS</p> <p>18 Attorney For UBS</p> <p>19 885 Third Avenue</p> <p>20 New York, New York</p> <p>21 BY: SHANNON MCLAUGHLIN, ESQ.</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1</p> <p>2 A P P E A R A N C E S: (Via Remote)</p> <p>3 KING &amp; SPALDING</p> <p>4 Attorney for Highland CLO Funding, Ltd.</p> <p>5 1180 Peachtree Street, NE</p> <p>6 Atlanta, Georgia 30309</p> <p>7 BY: MARK MALONEY, ESQ.</p> <p>8</p> <p>9</p> <p>10</p> <p>11 ALSO PRESENT:</p> <p>12 ALIZA GOREN, ESQ.</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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REQUESTS

DESCRIPTION PG

Transcript be marked Confidential under the Protective Order..... 10

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MR. WILSON: I'm John Wilson with the firm of Bonds Ellis Eppich Schafer Jones LP. And I represent Jim Dondero.

MR. MORRIS: John Morris and Hayley Winograd of Pachulski Stang Ziehl & Jones for the Debtor.

MS. WEISGERBER: Erica Weisgerber from Debevoise & Plimpton for HarbourVest.

MR. KANE: John Kane of Kane Russell Coleman & Logan, for CLO Holdco Limited.

MR. DRAPER: Douglas Draper of Heller Draper & Horn, for The Dugaboy Investment Trust and the Get Good Trust.

MS. McLAUGHLIN: Shannon McLaughlin from Latham & Watkins LLP for UBS.

MR. MALONEY: Mark Maloney from King & Spalding, on behalf of Highland CLO Funding Limited.

MS. WEISGERBER: I'm joined on

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the line by my colleagues from Debevoise, Natasha Labovitz and Emily Hush, and Aliza Goren from HarbourVest is on the line, as well.

MR. WILSON: As a preliminary matter, the witness' counsel has produced some documents to us that they've requested be subject to the confidentially order or a brief protective order entered at Document Number 382, in this case.

And she's also requested that all counsel and participants in this deposition agree to be bound by the terms of that order, because some of the documents that were produced are stamped "confidential," and they want to maintain that confidentially.

Do we have an agreement of all counsel and participants on the deposition to be bound by the terms of that agreed protective order?

(All agreed.)

MS. WEISGERBER: Okay. I think

<p style="text-align: right;">Page 10</p> <p>1 Confidential - Pugatch 2 that was everyone. Thank you all for 3 confirming. And the deposition will 4 be marked "confidential" until and 5 unless HarbourVest designates the 6 testimony otherwise. 7 MR. WILSON: And that's fine. 8 (Whereupon, a request for 9 Transcript be marked Confidential 10 under the Protective Order was made.) 11 MICHAEL PUGATCH, 12 called as a witness, having been 13 first duly affirmed by a Notary Public of 14 the State of New York, was examined and 15 testified as follows: 16 EXAMINATION 17 BY MR. WILSON: 18 Q. All right. Mr. Pugatch, how do 19 you pronounce your name? I'm sorry. 20 A. Yep, you've got it. Pugatch. 21 Q. Pugatch. Okay. Can you state 22 your full name for the record? 23 A. Yeah. Michael Pugatch. 24 Q. Okay. And you've been 25 designated by HarbourVest to discuss some</p>	<p style="text-align: right;">Page 11</p> <p>1 Confidential - Pugatch 2 matters related to the 9019 motion. And 3 specifically we asked that HarbourVest 4 produce a witness who could talk about the 5 negotiations of the settlement with the 6 Debtor, and also the factual allegations 7 underlying HarbourVest's Proof of Claim, 8 and those described in HarbourVest's 9 response to the claim objection, including 10 without limitation, its investment with 11 Acis/HCLOF in the alleged representations 12 made by the Debtor and/or Acis/HCLOF to 13 HarbourVest, and any and all agreements 14 entered into between HarbourVest and any 15 other party related to its investment. 16 Do you agree that you're the 17 best person to talk about these matters on 18 behalf of HarbourVest? 19 A. Yes. Yes. 20 Q. Okay. Have you given a 21 deposition before? 22 A. I have. 23 Q. Okay. So you understand how it 24 works that you're under oath, and that I'm 25 going to be asking questions and you're</p>
<p style="text-align: right;">Page 12</p> <p>1 Confidential - Pugatch 2 going to be giving answers. If at any 3 time I ask a question that you don't 4 understand, or we've had some problems 5 with sometimes connectivity issues with 6 Zoom. But yeah, any time that you don't 7 understand my question or you didn't catch 8 it, I'll be happy to repeat it. 9 Also, one thing I found with 10 Zoom is that it's easier to talk over 11 people. I'll try not to talk over you. I 12 would ask that you try to ensure that I've 13 finished asking my question before you 14 start your answer. And I will likewise 15 try to ensure that you've finished your 16 answer before start my next question. 17 And at any time during this 18 deposition if you feel the need to take a 19 break, that's totally okay with me. The 20 one thing that I would ask is if I've just 21 asked a question, that you answer the 22 question before requesting the break. 23 And if we have that agreement 24 and the ground rules, then I think I'm 25 ready to start asking you my questions.</p>	<p style="text-align: right;">Page 13</p> <p>1 Confidential - Pugatch 2 A. Sounds good. 3 Q. What's your current address? 4 A. 47 Wayne Road in Needham, 5 Massachusetts. 6 Q. Okay. And where are you located 7 today? 8 A. At that address. 9 Q. Okay. That's your home address? 10 A. Correct. 11 Q. And is anyone in the room with 12 you there? 13 A. No. 14 Q. And did you talk with anyone 15 about your deposition today? 16 A. Only counsel. 17 Q. Okay. And did you go over the 18 facts of the underlying investment and the 19 settlement negotiations with your counsel? 20 MS. WEISGERBER: I'm going to 21 object on privilege grounds. He 22 can -- he prepared for the deposition 23 with counsel. I don't think you can 24 inquire into specifics of the 25 preparation.</p>

<p style="text-align: right;">Page 14</p> <p>1 Confidential - Pugatch</p> <p>2 MR. WILSON: Okay. Well, you</p> <p>3 know, he was designated to talk about</p> <p>4 these matters, and I'm just asking if</p> <p>5 he discussed these matters with his</p> <p>6 counsel his before his testimony.</p> <p>7 That's all. I'm not asking the</p> <p>8 substance of those communications.</p> <p>9 MS. WEISGERBER: You're asking</p> <p>10 about conversations with counsel. How</p> <p>11 about you just ask if he's prepared to</p> <p>12 talk about those topics today?</p> <p>13 MR. WILSON: Okay.</p> <p>14 BY MR. WILSON:</p> <p>15 Q. Are you prepared to talk about</p> <p>16 those topics today?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Now, HarbourVest has</p> <p>19 filed several proofs of claim in this</p> <p>20 matter, and it looks like those are</p> <p>21 numbered 143 on behalf of HarbourVest,</p> <p>22 217 Global Fund L.P., and 144 HarbourVest</p> <p>23 2017 Global AIF, 149 HarbourVest Partners</p> <p>24 L.P., 150 HarbourVest Dover Street, IX</p> <p>25 Investment L.P., 153 HarbourVest -- or I'm</p>	<p style="text-align: right;">Page 15</p> <p>1 Confidential - Pugatch</p> <p>2 sorry, HV International VIII Secondary</p> <p>3 L.P., and 154 HarbourVest Skew Base AIF</p> <p>4 LP.</p> <p>5 And you're here to talk on</p> <p>6 behalf of all of those entities, and you</p> <p>7 have, for purpose of this settlement and</p> <p>8 you're -- the 9019 motion, these proofs of</p> <p>9 claim are all lumped together as one</p> <p>10 claim; is that correct?</p> <p>11 MS. WEISGERBER: I'm just going</p> <p>12 to object quickly and clarify that</p> <p>13 he's not here as a 30(b)(6) witness,</p> <p>14 but he is here as someone from</p> <p>15 HarbourVest who signed those proofs of</p> <p>16 claim. So with that, I'll let you</p> <p>17 continue.</p> <p>18 A. I'll just answered the question,</p> <p>19 yes, as a representative on behalf of all</p> <p>20 of those entities. I would defer to</p> <p>21 counsel, from a legal perspective, whether</p> <p>22 these are treated as a single or separate</p> <p>23 claims.</p> <p>24 MR. WILSON: Okay. And we can</p> <p>25 move on for now.</p>
<p style="text-align: right;">Page 16</p> <p>1 Confidential - Pugatch</p> <p>2 I'm going to submit the first</p> <p>3 exhibit. It's going to be Exhibit</p> <p>4 No. 1 to the deposition. I'm sending</p> <p>5 it by E-mail, and I'm also going to</p> <p>6 use a share screen.</p> <p>7 (Whereupon, Exhibit 1, Proof of</p> <p>8 Claim 143 filed 4/08/2020 nine pages,</p> <p>9 was marked for identification.)</p> <p>10 MR. WILSON: So this document</p> <p>11 right here is Claim Number 143 filed</p> <p>12 on April 8, 2020, and this one is</p> <p>13 filed on behalf of HarbourVest 2017</p> <p>14 Global Fund L.P.</p> <p>15 If we go down, scroll to the</p> <p>16 annex to proof of claim, it's Page 5</p> <p>17 of the document. It says that the</p> <p>18 Claimant is a limited partner in one</p> <p>19 of the Debtor's managed vehicles,</p> <p>20 Highland CLO Funding, Ltd.</p> <p>21 And I'm going to now send out an</p> <p>22 E-mail with Exhibit No. 2. I'm going</p> <p>23 to pull this Exhibit No. 2 document up</p> <p>24 on the share screen, as well. I guess</p> <p>25 that's right.</p>	<p style="text-align: right;">Page 17</p> <p>1 Confidential - Pugatch</p> <p>2 (Whereupon, Exhibit 2, Proof of</p> <p>3 Claim 149 filed 4/08/2020 nine pages,</p> <p>4 was marked for identification.)</p> <p>5 BY MR. WILSON:</p> <p>6 Q. Can you see the official proof,</p> <p>7 official form 410 proof of claim on your</p> <p>8 screen?</p> <p>9 A. The first one that you shared?</p> <p>10 Q. I'm now on Exhibit No. 2. Is it</p> <p>11 showing up on your screen?</p> <p>12 A. No.</p> <p>13 Q. Okay. Actually, I'm sorry. Is</p> <p>14 it now showing up on your screen?</p> <p>15 A. Now, it's showing up, yep.</p> <p>16 Q. Okay. So this one is Proof of</p> <p>17 Claim 149, filed on the same date. And</p> <p>18 this one's filed on behalf HarbourVest</p> <p>19 Partners L.P. And I'm going to scroll</p> <p>20 down to the annex to proof of claim, which</p> <p>21 looks largely like the annex to the</p> <p>22 previous proof of claim we looked at.</p> <p>23 But this one says, in Paragraph</p> <p>24 No. 2, the Claimant manages investment</p> <p>25 funds that are limited partners in one of</p>

<p style="text-align: right;">Page 18</p> <p>1 Confidential - Pugatch 2 the Debtor's managed vehicles, Highland 3 CLO Funding, Ltd. 4 And can you tell me why this 5 HarbourVest Partners L.P. filed a separate 6 proof of claim, from the entities that 7 were investors in HCLOF? 8 A. I would only be able to answer 9 that, based on conversations with counsel. 10 Q. But in any event, HarbourVest 11 Partners L.P. did not invest in HCLOF, 12 correct? 13 A. Not directly on behalf of 14 itself, no. 15 Q. All right. I'm going to stop 16 that share screen. 17 MR. WILSON: And this is going 18 to be Exhibit Number 3. 19 (Whereupon, Exhibit 3, 20 Declaration of Michael Pugatch in 21 Support of Motion of HarbourVest 22 Pursuant to Rule 3018(a), was marked 23 for identification.) 24 MR. WILSON: And Exhibit No. 3 25 that I've just submitted via E-mail,</p>	<p style="text-align: right;">Page 19</p> <p>1 Confidential - Pugatch 2 and I'm about to put it up on the 3 screen, is the Declaration of 4 HarbourVest. Let me get it up here, 5 so you can see it. This is the 6 declaration of Michael Pugatch in 7 support of motion of HarbourVest 8 pursuant to Rule 3018(a). 9 BY MR. WILSON: 10 Q. Have you seen this document 11 before? 12 A. Yes. 13 Q. And, in fact, this is your 14 declaration; is that correct? 15 A. Yes. 16 Q. And at the first line of this, 17 of Paragraph 1 says that you're the 18 managing director of HarbourVest Partners 19 LLC? 20 A. Correct. 21 Q. And how is HarbourVest Partners 22 LLC connected to these claims? 23 A. That is the corporate entity or 24 managing member of all of the underlying 25 funds that are managed on behalf of</p>
<p style="text-align: right;">Page 20</p> <p>1 Confidential - Pugatch 2 HarbourVest Partners L.P. 3 Q. And you're the managing director 4 of that entity? 5 A. A managing director to that 6 entity, yes. 7 Q. You said "a managing director," 8 are there others? 9 A. Yes. 10 Q. Who are the others? 11 A. There are over 50 managing 12 directors at HarbourVest Partners LLC. 13 Q. And are you the managing 14 director that has charge of this 15 particular HarbourVest investment, the one 16 in HCLOF? 17 A. Yes. 18 MR. WILSON: All right. I beg 19 your patience. I'm trying to conduct 20 this deposition solo. I've got a lot 21 of stuff I've got to go through. So 22 I'll do my best to do it efficiently. 23 But this next exhibit I'm going 24 to submit is going to be Exhibit No. 25 4. I'm sending it in the E-mail now.</p>	<p style="text-align: right;">Page 21</p> <p>1 Confidential - Pugatch 2 (Whereupon, Exhibit 4, Member 3 Agreement 28 pages, was marked for 4 identification.) 5 BY MR. WILSON: 6 Q. Can you see this on your share 7 screen? 8 A. I can. 9 Q. This is the Members Agreement 10 relating to the Company. 11 A. (Nods.) 12 Q. I'm just going to scroll down. 13 Okay. So this is the signature page for 14 the HarbourVest entities that were 15 invested in this company. And it says 16 that you were the authorized person to 17 sign on behalf of the first two entities: 18 HarbourVest Dover Street, HarbourVest 2017 19 Global, and then the next one here it says 20 you're managing director. And here we see 21 that HarbourVest Partners LLC. 22 And if we scroll down, we see 23 that you're the managing director of 24 HarbourVest Partners LLC, again, on behalf 25 of HV International, and that you're an</p>

<p style="text-align: right;">Page 22</p> <p>1 Confidential - Pugatch</p> <p>2 authorized person on behalf of HarbourVest</p> <p>3 Skew Base.</p> <p>4 So you signed all these</p> <p>5 agreements on behalf of the HarbourVest</p> <p>6 entities, when HarbourVest made its</p> <p>7 investment in HCLOF. Would that be</p> <p>8 correct?</p> <p>9 A. Correct.</p> <p>10 Q. Okay. Sorry that was</p> <p>11 cumbersome, but I needed to get through</p> <p>12 it.</p> <p>13 MR. WILSON: I'm going to now</p> <p>14 stop that share screen. And I'll need</p> <p>15 to go to Exhibit No. 5. I'm E-mailing</p> <p>16 out Exhibit No. 5 right now.</p> <p>17 (Whereupon, Exhibit 5,</p> <p>18 HarbourVest Response to Debtor's First</p> <p>19 Omnibus Objection 617 pages, was</p> <p>20 marked for identification.)</p> <p>21 BY MR. WILSON:</p> <p>22 Q. This is – I'll do another share</p> <p>23 screen – this is Docket 1057 filed in the</p> <p>24 Highland bankruptcy. And this is</p> <p>25 HarbourVest Response to Debtor's First</p>	<p style="text-align: right;">Page 23</p> <p>1 Confidential - Pugatch</p> <p>2 Omnibus Objection.</p> <p>3 Did you participate in the</p> <p>4 creation of this document?</p> <p>5 A. Yes.</p> <p>6 Q. So you had an opportunity to</p> <p>7 review this document, before it was filed?</p> <p>8 A. Correct.</p> <p>9 Q. And you agree with the</p> <p>10 statements and the positions taken in this</p> <p>11 document?</p> <p>12 A. I do.</p> <p>13 Q. All right. So what this says in</p> <p>14 Paragraph 8, that by the summer of 2017,</p> <p>15 HarbourVest was engaged in preliminary</p> <p>16 discussions with Highland, regarding the</p> <p>17 investment.</p> <p>18 First off, why was HarbourVest</p> <p>19 engaged in preliminary discussions with</p> <p>20 Highland?</p> <p>21 A. Highland had approached</p> <p>22 HarbourVest with an investment</p> <p>23 opportunity. This was really borne out of</p> <p>24 discussions that we had with them around a</p> <p>25 couple of investment opportunities, that</p>
<p style="text-align: right;">Page 24</p> <p>1 Confidential - Pugatch</p> <p>2 this opportunity with HCLOF being the one</p> <p>3 that by the summer of 2017, as stated</p> <p>4 here, was in, was advancing through</p> <p>5 discussions.</p> <p>6 Q. And which individuals at</p> <p>7 Highland were you engaged in discussions</p> <p>8 with? By "you," I mean HarbourVest.</p> <p>9 A. Yeah, I mean, originally it was</p> <p>10 through a couple of members of their</p> <p>11 investor relations team. My first point</p> <p>12 of contact was with Brad Eden, and then</p> <p>13 subsequently progressed to a larger subset</p> <p>14 of employees of Highland.</p> <p>15 Q. And who on behalf of HarbourVest</p> <p>16 was engaging in these discussions?</p> <p>17 A. It was primarily myself, my</p> <p>18 colleague, or two – two colleagues</p> <p>19 primarily, alongside myself.</p> <p>20 Q. I'm sorry. I didn't catch the</p> <p>21 last part.</p> <p>22 A. Sorry. Myself and two other</p> <p>23 colleagues primarily.</p> <p>24 Q. And who are these two other</p> <p>25 colleagues?</p>	<p style="text-align: right;">Page 25</p> <p>1 Confidential - Pugatch</p> <p>2 A. Dustin Willard and then a more</p> <p>3 junior member of the HarbourVest team.</p> <p>4 Q. When you say "the HarbourVest</p> <p>5 team," what does that mean?</p> <p>6 A. So the broader investment team</p> <p>7 and specifically in this context, the</p> <p>8 secondary investment team at HarbourVest,</p> <p>9 that this was an opportunity for.</p> <p>10 Q. So who made the final decision,</p> <p>11 on behalf of HarbourVest, to make this</p> <p>12 investment?</p> <p>13 A. Ultimately it was a decision</p> <p>14 made by the investment committee of</p> <p>15 HarbourVest.</p> <p>16 Q. And who's on that investment</p> <p>17 committee?</p> <p>18 A. It's a four-member committee</p> <p>19 comprised of managing directors within the</p> <p>20 firm.</p> <p>21 Q. And who are those managing</p> <p>22 directors?</p> <p>23 A. I don't recall at the time who</p> <p>24 the members were. I can tell you the</p> <p>25 members now, of that committee. It has</p>



<p style="text-align: right;">Page 26</p> <p>1 Confidential - Pugatch</p> <p>2 changed or evolved over time.</p> <p>3 Q. And that committee included you?</p> <p>4 A. I was involved in the</p> <p>5 decisionmaking of that, yes, correct.</p> <p>6 Q. So you were part of the four-man</p> <p>7 committee that made this decision?</p> <p>8 A. Yes.</p> <p>9 Q. All right. I'm going to go back</p> <p>10 to what we've marked as Exhibit 3, which</p> <p>11 is your declaration. And it says in</p> <p>12 Paragraph 2, that HarbourVest is a passive</p> <p>13 minority investor in Highland CLO funds,</p> <p>14 HCLOF, and by the way, I haven't stated</p> <p>15 this before, but in this deposition if I</p> <p>16 say HCLOF, I'm going to be referring to</p> <p>17 Highland CLO funds.</p> <p>18 But it says that the vehicle is</p> <p>19 managed by Highland Capital Management,</p> <p>20 L.P.</p> <p>21 And why do you say that that</p> <p>22 vehicle was managed by Highland Capital</p> <p>23 Management, L.P.?</p> <p>24 A. I believe that is the named</p> <p>25 investment manager of HCLOF, per the</p>	<p style="text-align: right;">Page 27</p> <p>1 Confidential - Pugatch</p> <p>2 organization documents of that vehicle.</p> <p>3 Q. You believe that that was the</p> <p>4 investment manager on the organization</p> <p>5 documents, which –</p> <p>6 A. Of the various transaction</p> <p>7 documents that we entered into, in</p> <p>8 connection with our investment.</p> <p>9 Q. Would those have been the</p> <p>10 documents that you had entered on November</p> <p>11 the 15 of 2017?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. It says that HarbourVest</p> <p>14 initially invested \$73,522,928 for roughly</p> <p>15 49 percent interest in HCLOF; and more</p> <p>16 specifically, that would be a 49.98</p> <p>17 percent interest in HCLOF, correct?</p> <p>18 A. Sounds right, yes.</p> <p>19 Q. Okay. And then HarbourVest</p> <p>20 contributed an additional \$4,998,501</p> <p>21 following a capital call, and it's</p> <p>22 received three dividends, each totally</p> <p>23 \$1,570,429.</p> <p>24 Is all of that correct?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 28</p> <p>1 Confidential - Pugatch</p> <p>2 Q. And has HarbourVest received any</p> <p>3 additional dividends, since the making of</p> <p>4 this declaration?</p> <p>5 A. No, we have not.</p> <p>6 Q. Now, I want to skip down to</p> <p>7 Paragraph 3, where it says that</p> <p>8 HarbourVest expected proceeds from the</p> <p>9 original HCLOF investment were projected</p> <p>10 to exceed 135 million.</p> <p>11 Do you agree with that?</p> <p>12 A. That was the original projected</p> <p>13 value of the investment, yes.</p> <p>14 Q. Well, whose expectation was</p> <p>15 that?</p> <p>16 A. Those were figures, as I recall,</p> <p>17 that were originally provided to us by</p> <p>18 Highland to form the basis of our due</p> <p>19 diligence that we went through, and</p> <p>20 penultimately were included as part of our</p> <p>21 investment thesis in making the</p> <p>22 investment.</p> <p>23 Q. So your testimony is that</p> <p>24 Highland told you that your investment</p> <p>25 would be worth over \$135 million?</p>	<p style="text-align: right;">Page 29</p> <p>1 Confidential - Pugatch</p> <p>2 A. Yes.</p> <p>3 MS. WEISGERBER: Objection to</p> <p>4 the form. Misstates testimony.</p> <p>5 Go ahead, Mike.</p> <p>6 A. That was, that was part of our</p> <p>7 original due diligence, on the investment</p> <p>8 opportunity.</p> <p>9 Q. When you say part of your due</p> <p>10 diligence, are you saying that the number</p> <p>11 originated from Highland or that the</p> <p>12 number originated from your due diligence</p> <p>13 operations?</p> <p>14 MS. WEISGERBER: Objection to</p> <p>15 form.</p> <p>16 A. The number originally came from</p> <p>17 Highland and formed the basis upon which</p> <p>18 we conducted due diligence on the</p> <p>19 investment opportunity.</p> <p>20 Q. And after performing due</p> <p>21 diligence, you were satisfied that that</p> <p>22 was a reasonable projection?</p> <p>23 A. Yes.</p> <p>24 Q. And what was the, what was the</p> <p>25 estimated date, in which the value of your</p>

<p style="text-align: right;">Page 30</p> <p>1 Confidential - Pugatch</p> <p>2 investment would exceed the \$135 million?</p> <p>3 MS. WEISGERBER: Objection to</p> <p>4 form.</p> <p>5 A. I don't recall exactly. That</p> <p>6 would have been over, over several years.</p> <p>7 And again, this was the -- this was the</p> <p>8 projected value based on the original</p> <p>9 investment or the assets that were held by</p> <p>10 HCLOF, at the time of our investment.</p> <p>11 Q. Now, when you talk about a</p> <p>12 portfolio manager -- I'm sorry, when you</p> <p>13 talk about investment manager, are you</p> <p>14 referring to the portfolio manager?</p> <p>15 A. No.</p> <p>16 Q. So what's the difference in an</p> <p>17 investment manager and a portfolio</p> <p>18 manager?</p> <p>19 A. So in the context of this</p> <p>20 investment, the investment manager. We --</p> <p>21 we had -- HarbourVest had an investment</p> <p>22 with HCLOF. Highland was the investment</p> <p>23 manager of HCLOF that in turn held equity</p> <p>24 positions in a variety of CLOs, which had</p> <p>25 various portfolio managers associated with</p>	<p style="text-align: right;">Page 31</p> <p>1 Confidential - Pugatch</p> <p>2 those, all Highland affiliates.</p> <p>3 Q. And so who was the portfolio</p> <p>4 manager for the HarbourVest investment in</p> <p>5 HCLOF?</p> <p>6 MS. WEISGERBER: Objection to</p> <p>7 form.</p> <p>8 A. There were various underling</p> <p>9 portfolio managers, depending on the</p> <p>10 underlying CLO position.</p> <p>11 Q. Well, who was the initial</p> <p>12 portfolio manager?</p> <p>13 A. So, again it would depend on</p> <p>14 which underlying assets we're talking</p> <p>15 about. HCLOF was a diversified portfolio</p> <p>16 of multiple underlying CLO equity</p> <p>17 positions, all with portfolio managers</p> <p>18 that were Highland affiliates, as we</p> <p>19 understood it.</p> <p>20 Q. Well, I'm going to go back to</p> <p>21 Exhibit 1, Paragraph 2, this says, in the</p> <p>22 second sentence, "Acis Capital Management</p> <p>23 GP, LLC, and Acis Capital Management,</p> <p>24 L.P., together Acis, the portfolio manager</p> <p>25 for HCLOF," and then it continues on,</p>
<p style="text-align: right;">Page 32</p> <p>1 Confidential - Pugatch</p> <p>2 "filed for Chapter 11."</p> <p>3 Is this proof of claim correct,</p> <p>4 when it states that Acis Capital</p> <p>5 Management GP, LLC, and Acis Capital</p> <p>6 Management, L.P., were the portfolio</p> <p>7 manager for HCLOF?</p> <p>8 MS. WEISGERBER: Objection to</p> <p>9 form.</p> <p>10 A. I know that there was an issue</p> <p>11 with the portfolio manager for at least</p> <p>12 the Acis CLOs that were held by HCLOF.</p> <p>13 Q. Well, how do you distinguish</p> <p>14 between the Acis CLOs and the Highland</p> <p>15 CLOs? Is that based on who was managing</p> <p>16 them?</p> <p>17 MS. WEISGERBER: Objection to</p> <p>18 form.</p> <p>19 A. Again, they were all underlying</p> <p>20 investments of HCLOF. We didn't</p> <p>21 distinguish the portfolio manager, if you</p> <p>22 will, of those vehicles, other than again</p> <p>23 they were Highland affiliates.</p> <p>24 Q. But it's fair to say that Acis</p> <p>25 was managing at least a portion of the</p>	<p style="text-align: right;">Page 33</p> <p>1 Confidential - Pugatch</p> <p>2 HCLOF investment, correct?</p> <p>3 A. Correct. The underlying</p> <p>4 investments held by HCLOF, correct.</p> <p>5 Q. And did anything -- from the</p> <p>6 time that you -- well, let's just go to</p> <p>7 the -- I think we had the members</p> <p>8 agreement up a second ago. This would</p> <p>9 have been Exhibit 4.</p> <p>10 Yeah, right here. No. 14,</p> <p>11 Highland HCF Advisor, Ltd. is listed as</p> <p>12 the portfolio manager on the members</p> <p>13 agreement.</p> <p>14 Is that accurate, that Highland</p> <p>15 HCF Advisor, Ltd. was the portfolio</p> <p>16 manager?</p> <p>17 MS. WEISGERBER: Objection to</p> <p>18 form. Can you state as of what date</p> <p>19 you're asking, Counsel?</p> <p>20 MR. WILSON: Well, the date of</p> <p>21 this memorandum is, it says right</p> <p>22 here, 15 November 2017.</p> <p>23 BY MR. WILSON:</p> <p>24 Q. So as of the date November 15,</p> <p>25 2017, who was the portfolio manager for</p>

<p style="text-align: right;">Page 34</p> <p>1 Confidential - Pugatch</p> <p>2 this investment?</p> <p>3 A. I don't recall the specific</p> <p>4 names of the various entities that sat</p> <p>5 below the HCLOF level or below Highland</p> <p>6 Capital, as the investment manager of</p> <p>7 HCLOF.</p> <p>8 Q. Well, are you familiar with a</p> <p>9 company called Brigade?</p> <p>10 A. Yes.</p> <p>11 Q. And was that company a</p> <p>12 sub-manager of this investment?</p> <p>13 MS. WEISGERBER: Objection to</p> <p>14 form.</p> <p>15 A. Not at the time of our</p> <p>16 investment.</p> <p>17 Q. Not at the time. Well, when did</p> <p>18 the portfolio managers begin to change in</p> <p>19 this investment?</p> <p>20 MS. WEISGERBER: Objection to</p> <p>21 form.</p> <p>22 A. Do you mean subsequent to our</p> <p>23 investment?</p> <p>24 Q. Yes.</p> <p>25 A. So as I understand it in</p>	<p style="text-align: right;">Page 35</p> <p>1 Confidential - Pugatch</p> <p>2 connection with the Acis bankruptcy that</p> <p>3 took place, there was a change in the</p> <p>4 underlying either portfolio manager of</p> <p>5 certain of the CLOs, the Acis-managed CLOs</p> <p>6 or Acis-branded CLOs, I should say, and/or</p> <p>7 sub-advisor of those CLOs.</p> <p>8 Q. And was that at the direction of</p> <p>9 the Chapter 11 trustee?</p> <p>10 MS. WEISGERBER: Objection.</p> <p>11 A. That's my understanding.</p> <p>12 Q. And so when this investment was</p> <p>13 initially made, was Highland HCF Advisor,</p> <p>14 Ltd. the portfolio manager of the entire</p> <p>15 investment?</p> <p>16 MS. WEISGERBER: Objection to</p> <p>17 form.</p> <p>18 A. I don't recall the specifics</p> <p>19 underneath the HCLOF entity.</p> <p>20 Q. Well, there aren't any other</p> <p>21 portfolio managers listed on this</p> <p>22 document, that I can see.</p> <p>23 Is there any place in this</p> <p>24 document that you can point me to that</p> <p>25 would identify another portfolio manager?</p>
<p style="text-align: right;">Page 36</p> <p>1 Confidential - Pugatch</p> <p>2 MS. WEISGERBER: Objection to</p> <p>3 form. The document speaks for itself.</p> <p>4 A. Again, I think we may be</p> <p>5 distinguishing here between portfolio</p> <p>6 manager at the HCLOF level and portfolio</p> <p>7 manager sub-advisor, again, I'm not sure</p> <p>8 the proper terminology as it relates to</p> <p>9 each of the underlying CLOs that were</p> <p>10 partially owned by HCLOF.</p> <p>11 Q. Well, after the Acis bankruptcy</p> <p>12 was filed, and after the Chapter 11</p> <p>13 trustee appointed Acis as a portfolio</p> <p>14 manager of at least part of HCLOF, did</p> <p>15 Highland HCF Advisor continue to serve as</p> <p>16 portfolio manager?</p> <p>17 MS. WEISGERBER: Objection to</p> <p>18 form.</p> <p>19 A. All of HarbourVest's interaction</p> <p>20 was with Highland as the investment</p> <p>21 manager of HCLOF. My understanding of the</p> <p>22 change in those entities related to the</p> <p>23 portfolio management of the underlying</p> <p>24 Acis CLOs, not a change in the portfolio</p> <p>25 manager, at the HCLOF level.</p>	<p style="text-align: right;">Page 37</p> <p>1 Confidential - Pugatch</p> <p>2 Q. Well, Highland is listed as a</p> <p>3 member under this -- Highland Capital</p> <p>4 Management LLP is listed as a member under</p> <p>5 this Member Agreement; is that correct?</p> <p>6 MS. WEISGERBER: Objection to</p> <p>7 form.</p> <p>8 A. If that's what the document</p> <p>9 says, yes.</p> <p>10 Q. I'm going to look -- let me stop</p> <p>11 my share screen for a second.</p> <p>12 All right. I'm now at the top</p> <p>13 of Page 5 of this Exhibit 4, where it</p> <p>14 says, "Dover IX shall mean HarbourVest</p> <p>15 Dover Street IX Investment L.P."</p> <p>16 And Dover IX was the largest</p> <p>17 single investor of the HarbourVest Group;</p> <p>18 is that correct?</p> <p>19 A. Correct.</p> <p>20 Q. All right. I'm now going to go</p> <p>21 down to Paragraph 5. I'm sorry, it's not</p> <p>22 Paragraph 5. Paragraph 4, where it says</p> <p>23 "Composition of Advisory Board" in</p> <p>24 Paragraph 4.1, The Company shall establish</p> <p>25 an Advisory Board composed of two</p>

<p style="text-align: right;">Page 38</p> <p>1 Confidential - Pugatch 2 individuals, one of whom shall be a 3 representative of CLO Holdco and one of 4 whom shall be a representative of 5 Dover IX. 6 And did this Advisory Board get 7 created? 8 A. I believe it was created, yes. 9 Q. And who was the representative 10 for CLO Holdco on the Advisory Board? 11 A. I don't know. 12 Q. Who was the representative for 13 Dover IX on the Advisory Board? 14 A. I can't recall whether it was 15 myself or one other colleague who jointly 16 manages this investment with me. 17 Q. You don't recall if you were on 18 the Advisory Board? 19 A. The Advisory Board never met 20 formally under its capacity as an Advisory 21 Board. 22 Q. Well, if you look down in 23 Paragraph 4.3, I've got my mouse pointed 24 here, I don't know if you can see it. 25 About two-thirds of the way down in this</p>	<p style="text-align: right;">Page 39</p> <p>1 Confidential - Pugatch 2 paragraph it says, "The consent of the 3 Advisory Board shall be required to 4 approve the following actions," and then 5 it lists a number of things. 6 Did the Advisory Board not have 7 to – was it not required that the 8 Advisory Board ever meet, because they 9 didn't take any of these actions? 10 MS. WEISGERBER: Objection. 11 Objection to form. 12 A. There may have been one or two 13 actions taken by the Advisory Board, I'm 14 looking at the list here to see what those 15 may even have been, during the duration of 16 our investment; but if so, those would 17 have been written resolutions or written 18 consents, as opposed to any meeting that 19 was convened amongst the entire Advisory 20 Board. 21 Q. Okay. And the entire Advisory 22 Board is just two individuals, correct? 23 A. Correct, that's my 24 understanding. 25 Q. Okay. And if you go up a few</p>
<p style="text-align: right;">Page 40</p> <p>1 Confidential - Pugatch 2 sentences above that in Paragraph 4.3 it 3 says, The portfolio manager shall not act 4 contrary to advice of the Advisory Board 5 with respect to any action or 6 determination expressly conditioned herein 7 or in the offering memorandum on the 8 consider approval of the Advisory Board. 9 So the portfolio manager did not 10 have the authority to disregard the advice 11 of the Advisory Board; is that correct? 12 MS. WEISGERBER: Objection to 13 form; misstates the document. 14 A. With respect to the limited role 15 that the Advisory Board would have to 16 play, yes, that would be my read. 17 Q. Now, what is your understanding 18 of a reset transaction? 19 A. Has to do with a refinancing and 20 reset of the investment period of an 21 underlying CLO. 22 Q. And would a reset transaction be 23 contained within this – these actions 24 that the Advisory Board's consent is 25 required to approve?</p>	<p style="text-align: right;">Page 41</p> <p>1 Confidential - Pugatch 2 A. No, it would not. 3 MS. WEISGERBER: Objection. 4 MR. MALONEY: Join. 5 Q. It would not? 6 A. It would not. 7 Q. Well, if a reset was to be 8 proposed, who would have the discretion to 9 make that decision to enter a reset 10 transaction? 11 MS. WEISGERBER: Objection to 12 form and foundation. 13 MR. MALONEY: Join. 14 A. That would be Highland as the 15 manager of HCLOF, who owns the equity 16 position to the underlying CLOs. 17 Q. So you're saying that Highland 18 would have the exclusive authority to 19 enter a reset transaction? 20 A. Correct. 21 MS. WEISGERBER: Objection to 22 form. 23 MR. MALONEY: Join. 24 Q. What if HarbourVest objected to 25 a reset transaction? Would it have any</p>

<p style="text-align: right;">Page 42</p> <p>1 Confidential - Pugatch 2 rights or remedies, in your understanding? 3 MS. WEISGERBER: I'm going to 4 object to form. And also just object 5 to the extent that this is calling for 6 legal conclusions. 7 Mike – 8 MR. WILSON: I've ask the 9 witness, within his understanding of 10 the way this investment worked. 11 MS. WEISGERBER: If you have an 12 understanding separate from any other 13 conversations with counsel, Mike, you 14 can certainly answer. 15 A. Within my understanding, 16 HarbourVest would not have had any ability 17 or rights to object to a reset or for 18 similar actions by Highland, as the 19 manager of the HCLOF. 20 Q. Okay. And just to, just for 21 clarity, in 4.2 it says that, All actions 22 taken by the Advisory Board shall be (i) 23 by a unanimous vote of all of the members 24 of the Advisory Board in attendance; or 25 (ii), by written consent in lieu of a</p>	<p style="text-align: right;">Page 43</p> <p>1 Confidential - Pugatch 2 meeting signed by all of the members of 3 the Advisory Board. 4 And we've talked about how there 5 were two members, one of which represented 6 CLO Holdco and one of which represented 7 HarbourVest, and it was your testimony 8 that you don't recall a meeting ever being 9 conducted that you believed that there had 10 been some written consents issued by the 11 Advisory Board; is that correct? 12 MS. WEISGERBER: Objection to 13 form. 14 A. That is my recollection, yes. 15 Q. I'm sorry? I didn't hear your 16 answer. 17 A. That is my recollection, yes. 18 Q. Okay. So what is the Advisory 19 Board's general function in your 20 understanding? 21 MS. WEISGERBER: Objection to 22 form. 23 You can answer, Mike, if you 24 know, other than, you know, legal 25 conclusions, things like that, legal</p>
<p style="text-align: right;">Page 44</p> <p>1 Confidential - Pugatch 2 advice. 3 And also, Mike, you're welcome 4 to look at the document, I think John 5 is E-mailing you the documents as 6 well. I don't know if you have the 7 full document in front of you. 8 THE WITNESS: Yeah, I can pull 9 it up here. 10 A. I mean, my understanding is the 11 Advisory Board, the Advisory Board's 12 involvement is as spelled as in Section 13 4.3 of the agreement that you have on the 14 screen. And that is the extent of the 15 role that the Advisory Board would play. 16 Q. Well, but as a practical matter, 17 what did that entail? 18 MS. WEISGERBER: Objection to 19 form. 20 A. Again, as a practical matter, 21 the listed items, which I can't see, that 22 are off the screen further down in 4.3 are 23 the items that would require approval by 24 the Advisory Board. 25 Q. But other than those items, the</p>	<p style="text-align: right;">Page 45</p> <p>1 Confidential - Pugatch 2 Advisory Board was not a routine part of 3 the decision-making of the portfolio 4 manager? 5 MS. WEISGERBER: Objection to 6 form. 7 A. Not at all. 8 Q. Did you say "not at all"? 9 A. Not at all, no. 10 Q. I'm going to refer back to 11 Exhibit 5, which was Document – or Docket 12 1057. I'll put that back on the share 13 screen. I wanted you to scroll, sorry. 14 It's a long document. 15 I want you to look at 16 Paragraph 37, which should be on your 17 screen. And it says that these are 18 misrepresentations that HarbourVest 19 alleges were made by Highland. And the 20 first bullet point states that, "Highland 21 never informed HarbourVest that Highland 22 had no intention of paying the Arbitration 23 Award and was undertaking steps to ensure 24 that Mr. Terry could not collect on his 25 judgment."</p>



<p style="text-align: right;">Page 46</p> <p>1 Confidential - Pugatch</p> <p>2 Now, Mr. Terry did not have an</p> <p>3 arbitration award against Highland; is</p> <p>4 that correct?</p> <p>5 MS. WEISGERBER: Objection to</p> <p>6 form and foundation.</p> <p>7 A. My understanding is there was an</p> <p>8 Arbitration Award, awarded for the benefit</p> <p>9 of Mr. Terry.</p> <p>10 Q. But that award was against Acis,</p> <p>11 correct?</p> <p>12 MS. WEISGERBER: Objection to</p> <p>13 form.</p> <p>14 A. I don't know all of the details.</p> <p>15 I do know that Acis was a subsidiary of</p> <p>16 Highland, and there was an arbitration</p> <p>17 award that was for the benefit of</p> <p>18 Mr. Terry.</p> <p>19 Q. But you would agree with me that</p> <p>20 if, if Highland, or I'm sorry if Mr. Terry</p> <p>21 had an arbitration award against Acis,</p> <p>22 then Highland would not have any</p> <p>23 obligation to pay that award?</p> <p>24 MR. MORRIS: Objection to the</p> <p>25 form of the question.</p>	<p style="text-align: right;">Page 47</p> <p>1 Confidential - Pugatch</p> <p>2 MS. WEISGERBER: Objection to</p> <p>3 the form. Objection to the extent</p> <p>4 that it calls for a legal conclusion.</p> <p>5 I don't -- Mike, if you have a</p> <p>6 layman's understanding of the answer</p> <p>7 to that question, you're welcome to</p> <p>8 answer. But if not, don't answer.</p> <p>9 A. My understanding was Acis was a</p> <p>10 controlled subsidiary of Highland's.</p> <p>11 Q. Okay. Well, the next bullet</p> <p>12 point says that, "Highland did not inform</p> <p>13 HarbourVest that it undertook the</p> <p>14 transfers to siphon assets away from Acis,</p> <p>15 L.P., and that such transfers would</p> <p>16 prevent Mr. Terry from collecting on the</p> <p>17 Arbitration Award."</p> <p>18 So if your understanding was</p> <p>19 that Highland was responsible for the</p> <p>20 arbitration award, then why is it relevant</p> <p>21 that Highland siphoned assets away from</p> <p>22 Acis, L.P.?</p> <p>23 MS. WEISGERBER: Objection to</p> <p>24 form. Misstates testimony.</p> <p>25 Can you clarify that question,</p>
<p style="text-align: right;">Page 48</p> <p>1 Confidential - Pugatch</p> <p>2 John? I think the beginning of it was</p> <p>3 a little muddled.</p> <p>4 BY MR. WILSON:</p> <p>5 Q. Well, this objection says that</p> <p>6 Highland had -- or response to objection,</p> <p>7 says that Highland had no intention of</p> <p>8 paying the arbitration award, but that</p> <p>9 seems to conflict with the next bullet</p> <p>10 point that says that it undertook</p> <p>11 transfers to siphon assets away from Acis,</p> <p>12 L.P., to prevent Mr. Terry from collecting</p> <p>13 on the arbitration award.</p> <p>14 So where were those assets being</p> <p>15 siphoned to?</p> <p>16 MS. WEISGERBER: Objection to</p> <p>17 form and foundation.</p> <p>18 If you're capable of answering</p> <p>19 that question, Mike, you can.</p> <p>20 A. I don't know the specific</p> <p>21 details of where those assets were</p> <p>22 siphoned off to, other than it was to</p> <p>23 another Highland affiliate.</p> <p>24 Q. The next sentence says that,</p> <p>25 "Highland simply did not inform</p>	<p style="text-align: right;">Page 49</p> <p>1 Confidential - Pugatch</p> <p>2 HarbourVest and represented to HarbourVest</p> <p>3 that the reason for changing the portfolio</p> <p>4 manager for HCLOF was because Acis was</p> <p>5 toxic in the industry."</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. And it seems when I read these</p> <p>9 documents that have been filed in the</p> <p>10 Highland bankruptcy, and also the Acis</p> <p>11 bankruptcy, that there's a difference in</p> <p>12 position as to which entity, being either</p> <p>13 Highland or HarbourVest, had the belief</p> <p>14 that the Acis name was toxic. Can you</p> <p>15 shed any light on that?</p> <p>16 MS. WEISGERBER: Objection to</p> <p>17 form.</p> <p>18 A. I can unequivocally say that the</p> <p>19 idea to change the portfolio manager or</p> <p>20 the idea that the Acis brand was toxic did</p> <p>21 not come from HarbourVest.</p> <p>22 Q. That was not at HarbourVest's</p> <p>23 suggestion or insistence?</p> <p>24 A. Absolutely not.</p> <p>25 Q. Well, whose suggestion was it</p>

<p style="text-align: right;">Page 50</p> <p>1 Confidential - Pugatch</p> <p>2 that the Acis name was toxic?</p> <p>3 A. Somebody at Highland.</p> <p>4 Q. Do you know who?</p> <p>5 A. I don't recall the conversation</p> <p>6 where that first came up or who said, or</p> <p>7 who at Highland said that.</p> <p>8 Q. But that conversation did occur</p> <p>9 prior to HarbourVest's investment?</p> <p>10 A. Yes.</p> <p>11 Q. So Acis was previously the</p> <p>12 portfolio manager for HCLOF prior to</p> <p>13 November 15, 2017, and now November 17 --</p> <p>14 or 15th, 2017, the portfolio manager was</p> <p>15 changed.</p> <p>16 And what is HarbourVest's</p> <p>17 position as to why that change in</p> <p>18 portfolio manager damaged it?</p> <p>19 MS. WEISGERBER: Objection;</p> <p>20 form, objection to the extent it calls</p> <p>21 for a legal conclusion.</p> <p>22 Mike, you can answer --</p> <p>23 MR. WILSON: I'm not asking for</p> <p>24 a -- with all due respect, I'm not</p> <p>25 asking for a legal conclusion. I'm</p>	<p style="text-align: right;">Page 51</p> <p>1 Confidential - Pugatch</p> <p>2 asking for his understanding why the</p> <p>3 change in the portfolio manager</p> <p>4 damaged HarbourVest.</p> <p>5 MS. WEISGERBER: Same objection.</p> <p>6 You can provide any</p> <p>7 non-privileged answer that you have,</p> <p>8 Mike, if any.</p> <p>9 A. Ultimately my understanding is</p> <p>10 that that change in portfolio manager and</p> <p>11 the subsequent litigation between Acis,</p> <p>12 Highland, and Josh Terry led to material</p> <p>13 diminution in value, as it relates to the</p> <p>14 underlying assets of HCLOF stemming from</p> <p>15 Highland's decision not to comply with the</p> <p>16 arbitration award to Mr. Terry.</p> <p>17 Q. Okay. Now, if you go up to</p> <p>18 Page 4 in this document, it says that on</p> <p>19 October 27th, and this is Paragraph 11</p> <p>20 now, "On October 27, 2017, Acis' portfolio</p> <p>21 management rights for HCLOF were</p> <p>22 transferred to Highland HCF"; is that</p> <p>23 correct?</p> <p>24 A. That sounds right, yes.</p> <p>25 Q. And this is over two weeks prior</p>
<p style="text-align: right;">Page 52</p> <p>1 Confidential - Pugatch</p> <p>2 to HarbourVest's investment, correct?</p> <p>3 A. Correct.</p> <p>4 Q. So HarbourVest had full</p> <p>5 knowledge that that the portfolio manager</p> <p>6 of HCLOF was being changed prior to its</p> <p>7 investment, correct?</p> <p>8 A. Correct.</p> <p>9 MS. WEISGERBER: Objection to</p> <p>10 form.</p> <p>11 And just to clarify, you're</p> <p>12 asking him, HarbourVest, he's</p> <p>13 testifying on behalf of himself. I</p> <p>14 could just take a standing objection</p> <p>15 to that because I know sometimes</p> <p>16 you're just saying HarbourVest meaning</p> <p>17 Mike, so...</p> <p>18 BY MR. WILSON:</p> <p>19 Q. Okay. And just to be clear,</p> <p>20 HCLOF changed its portfolio manager on</p> <p>21 October 27, 2017, but after the Acis</p> <p>22 bankruptcy was initiated the Chapter 11</p> <p>23 trustee made changes to the portfolio</p> <p>24 manager, correct?</p> <p>25 MS. WEISGERBER: Objection to</p>	<p style="text-align: right;">Page 53</p> <p>1 Confidential - Pugatch</p> <p>2 form, foundation.</p> <p>3 A. I know there were changes</p> <p>4 subsequent to the Acis bankruptcy, to the</p> <p>5 underlying management of the Acis CLOs.</p> <p>6 Q. All right. I'm going to go back</p> <p>7 to Paragraph 37, and I want to look at</p> <p>8 these next two bullet points.</p> <p>9 It says that, in the third</p> <p>10 bullet point, that "Highland indicated to</p> <p>11 HarbourVest that the dispute with</p> <p>12 Mr. Terry (which appeared on a litigation</p> <p>13 schedule presented to HarbourVest during</p> <p>14 diligence) would have no impact on</p> <p>15 investment activities."</p> <p>16 And that would be the opinion of</p> <p>17 Highland, correct?</p> <p>18 MS. WEISGERBER: Objection to</p> <p>19 form. The opinion of Highland? Is</p> <p>20 that what you meant to ask?</p> <p>21 MR. WILSON: Right.</p> <p>22 BY MR. WILSON:</p> <p>23 Q. That's Highland expressing its</p> <p>24 opinion to HarbourVest, correct?</p> <p>25 MS. WEISGERBER: Objection to</p>

<p style="text-align: right;">Page 54</p> <p>1 Confidential - Pugatch 2 form. 3 A. I would just say Highland 4 presented that as facts to HarbourVest. 5 Q. Okay. And the next one, it says 6 that "Highland expressed confidence in the 7 ability of HCLOF to reset or redeem the 8 CLOs notwithstanding that Highland was 9 using HCLOF as part of its scheme to avoid 10 the pending Arbitration Award." 11 That's again an opinion, right, 12 that Highland expressed confidence in the 13 ability of HCLOF? 14 MS. WEISGERBER: Objection to 15 form. Objection to the extent it 16 calls for a legal conclusion. 17 A. Ultimately, their ability, or 18 HCLOF's ability to reset or redeem the 19 CLOs would be subject to market conditions 20 and the ability to actually affect those 21 transactions, but they expressed their, 22 you know, their belief or view in HCLOF's 23 ability to do that notwithstanding the, 24 that change in portfolio manager. 25 Q. Well, in Paragraph 39 on that</p>	<p style="text-align: right;">Page 55</p> <p>1 Confidential - Pugatch 2 same page, it says, "In reliance on 3 Highland's misrepresentations and 4 omissions, HarbourVest invested in HCLOF." 5 Now, HarbourVest is a 6 sophisticated investor, correct? 7 A. Correct. 8 Q. And if we were to go to 9 Paragraph 36, it says, right here in the 10 middle, "These facts were material: 11 indeed, HarbourVest expressed concern and 12 requested further information regarding 13 the Transfers, the Arbitration Award, and 14 their implications for HCLOF, and the 15 investment's closing date was delayed." 16 And the closing date was 17 ultimately November 15, 2017, correct? 18 A. Correct. 19 Q. What was the initial closing 20 date that had to be delayed? 21 A. I believe it was scheduled for 22 November 1st. 23 Q. So HarbourVest had full 24 knowledge of these facts that it, that it 25 lays out here forming the basis of the</p>
<p style="text-align: right;">Page 56</p> <p>1 Confidential - Pugatch 2 alleged misrepresentations, and they 3 requested further information regarding 4 those facts. 5 Did they receive any further 6 information? 7 MR. MORRIS: Objection to the 8 form of the question. 9 MS. WEISGERBER: Objection to 10 form. Misstates testimony. 11 A. We did have subsequent 12 conversations and, I believe, receive 13 subsequent information describing the 14 intent around, and the, you know, new 15 structure, pro forma structure, of the 16 action that Highland had undertaken. And 17 part of the reason for the delay in the 18 closing was to ensure that we had adequate 19 time to diligence those changes, ask 20 questions, in connection with a thorough 21 due diligence process, and ensure that the 22 underlying legal structure was still 23 sound. 24 Q. And HarbourVest was investing 25 over \$73 million, correct?</p>	<p style="text-align: right;">Page 57</p> <p>1 Confidential - Pugatch 2 A. Right. 3 Q. And HarbourVest had made 4 investments of this nature previously, 5 correct? 6 A. We did. 7 MS. WEISGERBER: Objection to 8 form. 9 A. HarbourVest has made hundreds of 10 investment over its years, yes. 11 Q. And HarbourVest has conducted 12 due diligence regarding its investments in 13 the past, correct? 14 A. Correct. 15 Q. And HarbourVest received 16 additional information on items of concern 17 and reviewed that information and 18 satisfied itself that this was an 19 appropriate investment, correct? 20 MS. WEISGERBER: Objection to 21 form. Misstates testimony. 22 A. On the back of 23 misrepresentations by Highland, yes. 24 MR. WILSON: Well, I think 25 that's nonresponsive and I object.</p>



<p style="text-align: right;">Page 58</p> <p>1 Confidential - Pugatch</p> <p>2 Q. I'm just, I'm just, reading from</p> <p>3 your pleading that you filed in the</p> <p>4 bankruptcy, where you say that these were</p> <p>5 material facts, and HarbourVest sought</p> <p>6 more information regarding these facts.</p> <p>7 And then you've testified that they</p> <p>8 performed additional due diligence</p> <p>9 regarding that information they received,</p> <p>10 and then they determined that the</p> <p>11 investment was appropriate, correct?</p> <p>12 MS. WEISGERBER: Objection to</p> <p>13 form. Misstates testimony.</p> <p>14 Go ahead, Mike.</p> <p>15 A. Yeah, that is correct, on the</p> <p>16 back of the additional information we</p> <p>17 received from Highland.</p> <p>18 And I would add, with, you know,</p> <p>19 with the benefit of external advisors and</p> <p>20 outside counsel reviewing those structural</p> <p>21 changes, as well.</p> <p>22 Q. All right. Thank you.</p> <p>23 Now, going back to your</p> <p>24 declaration, which we've marked as</p> <p>25 Exhibit 3, Paragraph 3 says that "The</p>	<p style="text-align: right;">Page 59</p> <p>1 Confidential - Pugatch</p> <p>2 unaudited net asset value of HCLOF, as of</p> <p>3 August 31, 2020, was \$44,587,820."</p> <p>4 And is that a -- is that a book</p> <p>5 value, I guess?</p> <p>6 A. That is a fair market value, in</p> <p>7 accordance with the valuation policy of</p> <p>8 HCLOF.</p> <p>9 Q. Do you happen to know the net</p> <p>10 asset value of HCLOF as of February 1,</p> <p>11 2019? And I don't want an exact number, I</p> <p>12 just want an approximation.</p> <p>13 A. No, I do not.</p> <p>14 Q. Do you know where I could get</p> <p>15 that information?</p> <p>16 A. Presumably from the Debtor.</p> <p>17 Q. We'll come back to this in a</p> <p>18 minute, but I'm going to --</p> <p>19 MS. WEISGERBER: I think we've</p> <p>20 been going about an hour, John, if we</p> <p>21 can take a quick break.</p> <p>22 MR. WILSON: Yeah, a break is</p> <p>23 fine.</p> <p>24 MS. WEISGERBER: Actually,</p> <p>25 Mike...</p>
<p style="text-align: right;">Page 60</p> <p>1 Confidential - Pugatch</p> <p>2 MR. WILSON: I'm sorry? I</p> <p>3 didn't hear you.</p> <p>4 MS. WEISGERBER: It can be up to</p> <p>5 Mike.</p> <p>6 Mike, do you want to take a</p> <p>7 quick break? Do you want to keep</p> <p>8 going?</p> <p>9 MR. WILSON: No, we can, if</p> <p>10 y'all need a break, we can take a</p> <p>11 break, like 10, 15 minutes.</p> <p>12 THE WITNESS: Yeah, why don't we</p> <p>13 take a break, please.</p> <p>14 MR. WILSON: What do y'all</p> <p>15 prefer? 10, 15?</p> <p>16 MS. WEISGERBER: Ten minutes is</p> <p>17 fine.</p> <p>18 Mike, is that good with you.</p> <p>19 THE WITNESS: Yeah, ten-minute</p> <p>20 break is fine.</p> <p>21 MR. WILSON: Okay. Well, we'll</p> <p>22 break till, let's say, 1:20 central</p> <p>23 time.</p> <p>24 THE WITNESS: Perfect.</p> <p>25 MR. WILSON: All right. Thanks</p>	<p style="text-align: right;">Page 61</p> <p>1 Confidential - Pugatch</p> <p>2 guys.</p> <p>3 (Recess taken.)</p> <p>4 MR. WILSON: Yes, I just sent</p> <p>5 out an E-mail with Exhibit 6, and I'm</p> <p>6 going to pull that up on the screen</p> <p>7 share, as well.</p> <p>8 (Whereupon, Exhibit 6, Offering</p> <p>9 Memorandum 122 pages, was marked for</p> <p>10 identification.)</p> <p>11 BY MR. WILSON:</p> <p>12 Q. All right. So this is the</p> <p>13 Offering Memorandum, and I'm looking at</p> <p>14 the bottom of Page 1 -- I mean, the top of</p> <p>15 Page 1, I'm sorry.</p> <p>16 The Company that was being</p> <p>17 invested in is Highland CLO Funding, Ltd.</p> <p>18 Do you see that, Mr. Pugatch?</p> <p>19 MS. WEISGERBER: Objection to</p> <p>20 form.</p> <p>21 A. I do. Okay.</p> <p>22 Q. And then this document defines</p> <p>23 Highland, as Highland Capital Management,</p> <p>24 L.P. Do you see that?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 62</p> <p>1 Confidential - Pugatch</p> <p>2 Q. Okay. Now, if we go down to, I</p> <p>3 guess it's Page 8 of this document, and</p> <p>4 this first full paragraph at the top, it</p> <p>5 says, "No voting member of the Advisory</p> <p>6 Board shall be a controlled affiliate of</p> <p>7 Highland."</p> <p>8 Do you see that?</p> <p>9 A. I do.</p> <p>10 Q. And then it also says that, "It</p> <p>11 being understood that none of CLO Holdco</p> <p>12 Ltd., it's wholly-owned subsidiaries, or</p> <p>13 any of their respective directors or</p> <p>14 trustees shall be deemed to be a</p> <p>15 controlled affiliate of Highland, due to</p> <p>16 their preexisting non-discretionary</p> <p>17 advisory relationship with Highland."</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. So there were no affiliates of</p> <p>21 Highland on the Advisory Board, correct?</p> <p>22 MS. WEISGERBER: Objection to</p> <p>23 form.</p> <p>24 A. For voting purposes under the</p> <p>25 document, that is how this reads, correct.</p>	<p style="text-align: right;">Page 63</p> <p>1 Confidential - Pugatch</p> <p>2 MR. WILSON: All right. I'm</p> <p>3 going to turn to the next exhibit.</p> <p>4 And this is going to be Exhibit No. 7</p> <p>5 coming in the E-mail. I'm also going</p> <p>6 to put Exhibit No. 7 on the screen.</p> <p>7 (Whereupon, Exhibit 7, Share</p> <p>8 Subscription and Transfer Agreement 31</p> <p>9 pages, was marked for identification.)</p> <p>10 Q. All right. Do you see that?</p> <p>11 The "Subscription and Transfer Agreement</p> <p>12 For Ordinary Shares"?</p> <p>13 A. Yep.</p> <p>14 Q. All right. So what this</p> <p>15 document says is that, it repeats that</p> <p>16 Highland HCLF Advisory Ltd. is the</p> <p>17 portfolio manager. Highland CLO Funding</p> <p>18 Ltd. is the fund, and CLO Holdco Ltd. is</p> <p>19 the existing shareholder.</p> <p>20 And if we go down to the bottom</p> <p>21 half of this page, it says that</p> <p>22 HarbourVest was acquiring its shares in</p> <p>23 this investment from CLO Holdco, correct?</p> <p>24 A. Yes.</p> <p>25 MS. WEISGERBER: Objection to</p>
<p style="text-align: right;">Page 64</p> <p>1 Confidential - Pugatch</p> <p>2 form.</p> <p>3 Q. And prior to the date of this</p> <p>4 document, which I believe is November 15,</p> <p>5 2017, CLO Holdco held 100 percent of the</p> <p>6 shares of HCLOF, correct?</p> <p>7 MS. WEISGERBER: Objection to</p> <p>8 form, foundation.</p> <p>9 A. I don't recall. I know they</p> <p>10 were the largest, the largest investor. I</p> <p>11 don't recall if it was 100 percent.</p> <p>12 Q. Well, if you look at the chart</p> <p>13 below Paragraph A, it says that CLO Holdco</p> <p>14 Ltd. immediately prior to the placing on</p> <p>15 100 percent share percentage.</p> <p>16 Do you have any reason to</p> <p>17 disagree with that?</p> <p>18 A. No.</p> <p>19 MS. WEISGERBER: Objection to</p> <p>20 form.</p> <p>21 Q. All right. Now, below CLO</p> <p>22 Holdco Ltd., these are the five</p> <p>23 HarbourVest entities that have filed</p> <p>24 proofs of claim in this bankruptcy,</p> <p>25 correct?</p>	<p style="text-align: right;">Page 65</p> <p>1 Confidential - Pugatch</p> <p>2 MS. WEISGERBER: Objection to</p> <p>3 form.</p> <p>4 A. Those are the five HarbourVest</p> <p>5 entities with a direct investment in</p> <p>6 HCLOF.</p> <p>7 Q. And each one of those entities</p> <p>8 has filed a proof of claim in this</p> <p>9 bankruptcy, correct?</p> <p>10 A. Yes.</p> <p>11 Q. And the largest – I think we</p> <p>12 discussed this earlier, but Dover Street</p> <p>13 IX is the largest of those investors, with</p> <p>14 a 35.49 percent share percentage, correct?</p> <p>15 MS. WEISGERBER: Objection to</p> <p>16 form.</p> <p>17 A. Correct.</p> <p>18 Q. And if you take the total of</p> <p>19 those investments of the HarbourVest</p> <p>20 entities, you get a 49.98 percent total.</p> <p>21 Is that your understanding?</p> <p>22 MS. WEISGERBER: Objection to</p> <p>23 form.</p> <p>24 A. I know it has 49 percent, and</p> <p>25 some percentage. I'll take your math as</p>

<p style="text-align: right;">Page 66</p> <p>1 Confidential - Pugatch</p> <p>2 correct.</p> <p>3 Q. And 49.98 percent is larger than</p> <p>4 the next largest shareholder, which is CLO</p> <p>5 Holdco which is 49.02 percent, correct?</p> <p>6 MS. WEISGERBER: Objection to</p> <p>7 form.</p> <p>8 A. In taking all of the HarbourVest</p> <p>9 entities, collectively, yes, correct.</p> <p>10 Q. And so I want to go back to</p> <p>11 earlier where we saw in documents filed by</p> <p>12 HarbourVest, where it refers to itself as</p> <p>13 a passive investor. What do you, I</p> <p>14 apologize if I've already asked you this</p> <p>15 question, but what do you mean by passive</p> <p>16 investor?</p> <p>17 A. Meaning we were a minority</p> <p>18 investor in HCLOF. HCLOF was fully</p> <p>19 controlled by Highland as the investment</p> <p>20 manager. So HarbourVest did not have any</p> <p>21 governance, rights, or control as it</p> <p>22 related to the ongoing investment</p> <p>23 management and decisionmaking of HCLOF.</p> <p>24 Q. HarbourVest has the largest</p> <p>25 percentage of the shares of any of these</p>	<p style="text-align: right;">Page 67</p> <p>1 Confidential - Pugatch</p> <p>2 investors, correct?</p> <p>3 MS. WEISGERBER: Objection to</p> <p>4 form.</p> <p>5 A. Taken collectively, yes.</p> <p>6 Q. And HarbourVest owned one of the</p> <p>7 two spots on the Advisory Board, correct?</p> <p>8 MS. WEISGERBER: Objection to</p> <p>9 form.</p> <p>10 A. Correct.</p> <p>11 Q. And if you look down below the</p> <p>12 HarbourVest entities on this chart, you</p> <p>13 see that Highland Capital Management, L.P.</p> <p>14 is purchasing a .63 percent interest,</p> <p>15 correct?</p> <p>16 MS. WEISGERBER: Objection to</p> <p>17 form. The document speaks for itself.</p> <p>18 A. According to the document, yes.</p> <p>19 Q. Do you have any reason to</p> <p>20 disagree with that document?</p> <p>21 MS. WEISGERBER: Objection to</p> <p>22 form.</p> <p>23 A. I do not.</p> <p>24 MR. WILSON: All right. I'm</p> <p>25 going to stop that screen share. I'm</p>
<p style="text-align: right;">Page 68</p> <p>1 Confidential - Pugatch</p> <p>2 going to E-mail out the next exhibit.</p> <p>3 This was Exhibit 8 that I just sent,</p> <p>4 and I'll pull it up on the screen</p> <p>5 share.</p> <p>6 (Whereupon, Exhibit 8, E-mail</p> <p>7 08/15/2017, was marked for</p> <p>8 identification.)</p> <p>9 Q. Now, I'll represent to you that</p> <p>10 I received this document this morning from</p> <p>11 your counsel. Do you recognize this</p> <p>12 E-mail? Have you seen it before?</p> <p>13 A. Yes, I have.</p> <p>14 Q. And this E-mail is sent by Brad</p> <p>15 Eden. I think you mentioned that he was</p> <p>16 one of the representatives that was</p> <p>17 involved in the pre-investment discussions</p> <p>18 with Highland?</p> <p>19 A. Correct.</p> <p>20 Q. And I think you told me that</p> <p>21 Dustin Willard was involved in those</p> <p>22 discussions on the HarbourVest side,</p> <p>23 correct?</p> <p>24 A. Correct.</p> <p>25 Q. And so this is an E-mail sent on</p>	<p style="text-align: right;">Page 69</p> <p>1 Confidential - Pugatch</p> <p>2 August 15, 2017 from Brad Eden to Dustin</p> <p>3 Willard. Are you familiar with Thomas</p> <p>4 Surgent?</p> <p>5 A. Yes.</p> <p>6 Q. Was he involved in those</p> <p>7 discussions with you and HarbourVest as</p> <p>8 well?</p> <p>9 A. In some of those discussions,</p> <p>10 yes.</p> <p>11 Q. Okay. So when it says, "Dustin,</p> <p>12 attached is a legal summary. Of course,</p> <p>13 Thomas is available to answer any</p> <p>14 follow-up questions." Do you know if</p> <p>15 Thomas was consulted with any follow-up</p> <p>16 questions?</p> <p>17 A. I recall –</p> <p>18 MS. WEISGERBER: Objection to</p> <p>19 form.</p> <p>20 A. – having follow-up</p> <p>21 conversations with Highland, I don't –</p> <p>22 around these legal summaries. I don't</p> <p>23 recall with whom.</p> <p>24 Q. Okay. And just to show you the</p> <p>25 attachment that's referenced in the</p>

<p>Page 70</p> <p>1 Confidential - Pugatch 2 E-mail, this says that SEC financial 3 crisis matter crusader, Terry, Daugherty 4 and UBS. So and then I guess these are -- 5 this is information provided by Highland 6 to HarbourVest regarding these matters. 7 Why were these particular matters 8 addressed in this E-mail, to your 9 knowledge? 10 MS. WEISGERBER: Objection to 11 form and foundation. 12 A. These were all outstanding 13 litigation matters that we had become 14 aware of in connection with our diligence 15 that we asked for a further explanation 16 from Highland on the underlying substance. 17 Q. Now, did you become 18 independently aware of these in the course 19 of your due diligence, or were these 20 brought to your attention by Highland 21 first? 22 A. I don't know. 23 MS. WEISGERBER: Objection to 24 form. 25 Q. You don't know?</p>	<p>Page 71</p> <p>1 Confidential - Pugatch 2 A. (Nods.) 3 Q. Okay. And particularly with 4 respect to Mr. Terry, is it your opinion 5 that there are any material 6 misrepresentations made in this summary? 7 MS. WEISGERBER: Objection to 8 form. Objection to the extent it 9 calls for a legal conclusion. 10 Mike, to the extent you have an 11 answer that does not infringe on 12 conversations with counsel, you can 13 provide it. 14 A. Yeah, I would say our 15 understanding or interpretation of that, 16 or the answer to that question would be 17 based on conversations with counsel. 18 Q. Well, this document was provided 19 to you in the course of the discussions 20 prior to HarbourVest's investment, and 21 you've stated that Highland, or you've 22 taken the position that Highland made 23 material misrepresentations to 24 HarbourVest, in the course of these 25 discussions.</p>
<p>Page 72</p> <p>1 Confidential - Pugatch 2 Does this document evidence 3 those material misrepresentations? 4 MS. WEISGERBER: Objection to 5 form. Objection to the extent it 6 calls for a legal conclusion. 7 A. Yeah, same answer as previous. 8 Q. Well, I'm not asking you for a 9 legal conclusion. I'm asking you are 10 there misrepresentations in this document 11 that you claim Highland made? 12 MS. WEISGERBER: Same 13 objections. 14 I think misrepresentations calls 15 for a legal conclusion regarding legal 16 misrepresentations, actionable 17 misrepresentations. So if he doesn't 18 have any non-privileged testimony to 19 give, he can't give any testimony. 20 MR. WILSON: Well, I'm here 21 today to investigate HarbourVest's 22 claim and one of the basis of 23 HarbourVest's claim is 24 misrepresentation. So I'm trying to 25 figure out what those</p>	<p>Page 73</p> <p>1 Confidential - Pugatch 2 misrepresentations were. 3 And I would ask that the witness 4 tell me if there's a misrepresentation 5 in this document that was provided in 6 this E-mail. 7 MS. WEISGERBER: Same 8 objections. 9 Mike, if you have a general 10 understanding of, generally, 11 misrepresentations that HarbourVest 12 believes were made in connection or 13 regarding the Terry litigation, 14 et cetera, you can provide that 15 information. 16 THE WITNESS: Yeah, sure. 17 A. So in general, my understanding 18 and the way that Highland had 19 characterized the ongoing litigation with 20 Mr. Terry was that it was nothing more 21 than an employment dispute with a former 22 employee and that, you know, the 23 arbitration -- well, actually, it was 24 before the Arbitration Board, but the 25 ongoing litigation had no impact, bearing,</p>

<p style="text-align: right;">Page 74</p> <p>1 Confidential - Pugatch 2 or ultimate result on the underlying CLOs 3 that Highland managed, including the Acis 4 CLOs. 5 Q. So you're saying that 6 Highland – 7 MR. MORRIS: John, I'm sorry to 8 interrupt. Before you go on, somebody 9 with the initials DSD just joined the 10 deposition. Can you please identify 11 yourself? 12 MR. DRAPER: This is Douglas 13 Draper. I just changed machines. 14 MR. MORRIS: Okay. No problem, 15 Doug. Thank you. 16 BY MR. WILSON: 17 Q. So, and I'm not trying to put 18 words in your mouth, but is the gist of 19 what you're telling me that Highland 20 represented that this was a minor dispute 21 with a former employee and it would not 22 affect its CLO business? 23 A. Correct. 24 MS. WEISGERBER: Objection to 25 form.</p>	<p style="text-align: right;">Page 75</p> <p>1 Confidential - Pugatch 2 A. Correct. 3 Q. Well, are there any more 4 specific E-mails or written 5 communications, that you're aware of, that 6 would contain misrepresentations by 7 Highland to HarbourVest? 8 MS. WEISGERBER: Objection to 9 form. 10 Are you asking about from 11 today's production, or are you asking 12 about just, in general? 13 MR. WILSON: Well, you produced 14 two E-mails to us today. I'm just 15 asking if there's anything else he's 16 aware of where there's written 17 misrepresentations from Highland to 18 HarbourVest. 19 MS. WEISGERBER: Mike, if you 20 have an answer separate from 21 conversations with lawyers, et cetera, 22 you can certainly answer. 23 A. Yeah, my understanding of the 24 documents I reviewed that were part of the 25 production to you earlier today, there is</p>
<p style="text-align: right;">Page 76</p> <p>1 Confidential - Pugatch 2 another document that would also include 3 misrepresentations on the part of this, 4 the Terry lawsuit and ultimate impact on 5 the CLO business. 6 BY MR. WILSON: 7 Q. And what document is that? 8 A. That was the E-mail, E-mail with 9 an attachment around a response to a Wall 10 Street Journal article and some of the 11 content in the E-mail itself. 12 Q. Okay. We'll look at that one. 13 What was the – HarbourVest had 14 seen the Terry Arbitration Award, correct? 15 MS. WEISGERBER: Objection to 16 form. 17 Q. Prior to making its investment 18 in HCLOF? 19 A. We were aware of the existence 20 and the outcome of the Arbitration Award. 21 Q. Had you read the Arbitration 22 Award? 23 A. No. 24 Q. Well, how did you know the 25 substance of the Arbitration Award without</p>	<p style="text-align: right;">Page 77</p> <p>1 Confidential - Pugatch 2 reading it? 3 MS. WEISGERBER: Objection to 4 form. 5 A. We were informed by Highland of 6 the outcome of the ongoing litigation and 7 the outcome of the Arbitration Award. 8 Q. Was that part of the 9 documentation that you requested Highland 10 provide you to continue your due 11 diligence, before making the investment? 12 MS. WEISGERBER: Objection to 13 form. 14 A. We certainly requested more 15 color around the outcome of that, and any 16 impact that it could have to HCLOF or the 17 ongoing viability of Highland's CLO 18 business. 19 Q. And what, what were you provided 20 with respect to the Terry Arbitration 21 Award? 22 MS. WEISGERBER: Objection to 23 form. 24 A. The existence of that award, the 25 quantum of that award, the judgment of</p>



<p style="text-align: right;">Page 78</p> <p>1 Confidential - Pugatch</p> <p>2 just under \$8 million in connection with</p> <p>3 that award. That was the information that</p> <p>4 was disclosed at -- and represented as a</p> <p>5 settlement or, you know, arbitration</p> <p>6 ruling, in connection with the employee</p> <p>7 litigation, wrongful termination suit.</p> <p>8 Q. So did HarbourVest not request a</p> <p>9 copy of the Arbitration Award to review?</p> <p>10 MS. WEISGERBER: Objection to</p> <p>11 form.</p> <p>12 A. We did not specifically, no.</p> <p>13 Q. And so, to this day, have you</p> <p>14 read the Arbitration Award?</p> <p>15 A. I have not.</p> <p>16 MS. WEISGERBER: Objection to</p> <p>17 form.</p> <p>18 Q. You have not?</p> <p>19 A. I have not.</p> <p>20 MR. WILSON: Okay. I think my</p> <p>21 last E-mail went out with Exhibit 9 on</p> <p>22 it. I will pull that up.</p> <p>23 Q. Can you see that on the screen</p> <p>24 share?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 79</p> <p>1 Confidential - Pugatch</p> <p>2 (Whereupon, Exhibit 9,</p> <p>3 11/29/2017 E-mail with cover letter</p> <p>4 Highland Capital Management, was</p> <p>5 marked for identification.)</p> <p>6 Q. Okay. So I think this is out of</p> <p>7 order, but this should have been first in</p> <p>8 the exhibit. But this is an E-mail from</p> <p>9 Hunter Covitz to Dustin Willard, Michael</p> <p>10 Pugatch and Nick Bellisario, carbon copies</p> <p>11 to Trey Parker and Brad Eden.</p> <p>12 And Trey Parker and Brad Eden</p> <p>13 are Highland affiliates, right?</p> <p>14 A. Yes.</p> <p>15 Q. And we've talked about Dustin</p> <p>16 Willard. Who's Nick Bellisario?</p> <p>17 A. He was another member of the</p> <p>18 HarbourVest team.</p> <p>19 Q. And was he on the, the</p> <p>20 four-member board that you talked about</p> <p>21 earlier, that made the investment</p> <p>22 decision?</p> <p>23 A. No, he was the junior member of</p> <p>24 the investment team that I alluded to.</p> <p>25 Q. Okay. And this, this E-mail</p>
<p style="text-align: right;">Page 80</p> <p>1 Confidential - Pugatch</p> <p>2 came out about two weeks after the</p> <p>3 HarbourVest investment, correct?</p> <p>4 A. Correct.</p> <p>5 Q. And it's your opinion or</p> <p>6 position that this E-mail contains</p> <p>7 misrepresentations that Highland made to</p> <p>8 HarbourVest?</p> <p>9 MS. WEISGERBER: Objection to</p> <p>10 form. Objection to the extent it</p> <p>11 calls for a legal conclusion.</p> <p>12 A. Yes.</p> <p>13 Q. And there was a Wall Street</p> <p>14 Journal article that had come out shortly</p> <p>15 before this E-mail, correct?</p> <p>16 A. Correct.</p> <p>17 Q. And how did you became aware of</p> <p>18 that Wall Street Journal article?</p> <p>19 A. I certainly would have seen it.</p> <p>20 I may have been sent it separately by</p> <p>21 Highland, I don't recall.</p> <p>22 Q. You don't recall if you saw it</p> <p>23 independently or Highland telling you</p> <p>24 about it?</p> <p>25 A. I don't.</p>	<p style="text-align: right;">Page 81</p> <p>1 Confidential - Pugatch</p> <p>2 Q. And what did you -- what was</p> <p>3 your reaction to receiving these E-mails</p> <p>4 from Highland regarding that article?</p> <p>5 MS. WEISGERBER: Objection to</p> <p>6 form.</p> <p>7 A. The article or the accusations</p> <p>8 in the article were something that</p> <p>9 required more explanation from our</p> <p>10 perspective.</p> <p>11 Q. And attached to this E-mail</p> <p>12 was -- we just scrolled through it a</p> <p>13 second ago -- but a letter from James</p> <p>14 Dondero that was sent to the</p> <p>15 editor-in-chief of the Wall Street</p> <p>16 Journal, Mr. Gerard Baker, on November</p> <p>17 28th.</p> <p>18 And did you read this</p> <p>19 attachment?</p> <p>20 A. Yes.</p> <p>21 Q. And did this attachment to this</p> <p>22 E-mail aleve your concerns that you had</p> <p>23 regarding the article?</p> <p>24 MS. WEISGERBER: Objection to</p> <p>25 form.</p>

<p style="text-align: right;">Page 82</p> <p>1 Confidential - Pugatch</p> <p>2 A. I wouldn't say alleviated the</p> <p>3 concerns but certainly provided an</p> <p>4 explanation or refute to some of the</p> <p>5 claims made in the, in the article.</p> <p>6 Q. And do you contend that this</p> <p>7 letter that was written to Gerard Baker</p> <p>8 and provided later to HarbourVest was a</p> <p>9 material misrepresentation?</p> <p>10 MS. WEISGERBER: Objection to</p> <p>11 form.</p> <p>12 Don't answer that, Mike. It</p> <p>13 calls for a legal conclusion.</p> <p>14 MR. WILSON: I'm asking for his</p> <p>15 understanding.</p> <p>16 Q. Do you contend that there's</p> <p>17 misrepresentations in this letter?</p> <p>18 MS. WEISGERBER: Material</p> <p>19 misrepresentations absolutely calls</p> <p>20 for a legal conclusion, John.</p> <p>21 MR. WILSON: Well, I've</p> <p>22 shortened it to misrepresentations.</p> <p>23 So I just want to know if he thinks</p> <p>24 there's anything that's misrepresented</p> <p>25 in this letter.</p>	<p style="text-align: right;">Page 83</p> <p>1 Confidential - Pugatch</p> <p>2 MS. WEISGERBER: Same</p> <p>3 objections.</p> <p>4 Mike, if you have an</p> <p>5 understanding, separate from</p> <p>6 conversations with lawyers, you can</p> <p>7 answer.</p> <p>8 A. I would need to reread the</p> <p>9 letter to definitively answer that outside</p> <p>10 of conversations with counsel.</p> <p>11 Q. But to be clear, this letter was</p> <p>12 issued two weeks after HarbourVest's</p> <p>13 investment, correct?</p> <p>14 A. Correct.</p> <p>15 MS. WEISGERBER: Objection;</p> <p>16 asked and answered.</p> <p>17 MR. WILSON: I'm going to now</p> <p>18 send out the next exhibit, which is</p> <p>19 going to be Exhibit No. 10.</p> <p>20 (Whereupon, Exhibit 10, 2004</p> <p>21 Examination of Investor in Highland</p> <p>22 CLO Funding Ltd. 10/10/2018, was</p> <p>23 marked for identification.)</p> <p>24 MR. WILSON: It just went</p> <p>25 through. So I'm going to pull it up</p>
<p style="text-align: right;">Page 84</p> <p>1 Confidential - Pugatch</p> <p>2 on my screen share.</p> <p>3 So this Exhibit 10, the document</p> <p>4 I received this morning, filed in the</p> <p>5 Acis bankruptcy, it looks like, well,</p> <p>6 let's see, dated in, dated October 10,</p> <p>7 2018.</p> <p>8 BY MR. WILSON:</p> <p>9 Q. Have you seen this document</p> <p>10 before?</p> <p>11 A. Yes.</p> <p>12 Q. And it's a motion for 2004</p> <p>13 Examination of Investor in Highland CLO</p> <p>14 Funding, Ltd., correct?</p> <p>15 A. Sorry. Was there a question,</p> <p>16 John?</p> <p>17 Q. Yeah. I was just asking you to</p> <p>18 confirm that this was the motion for 2004</p> <p>19 Examination of Investor in Highland CLO</p> <p>20 Funding?</p> <p>21 A. Yes.</p> <p>22 Q. And so if I scroll down to</p> <p>23 Paragraph 6, which is on, it looks like</p> <p>24 it's on Page 4. In the second sentence,</p> <p>25 it says that "Although HCLOF/ALF was a one</p>	<p style="text-align: right;">Page 85</p> <p>1 Confidential - Pugatch</p> <p>2 time wholly-owned by an affiliate of</p> <p>3 Highland, it did an offering memorandum in</p> <p>4 November of 2017 and as a result, is now</p> <p>5 owned 49.985% by certain affiliates of a</p> <p>6 large investor and manager of private</p> <p>7 equity funds."</p> <p>8 And that's defined as investor.</p> <p>9 So the Investor is the HarbourVest</p> <p>10 entities collectively, correct?</p> <p>11 A. Correct.</p> <p>12 Q. All right. And then the next</p> <p>13 sentence, says that "Despite its large</p> <p>14 ownership percentage in HCLOF in the</p> <p>15 alleged millions in losses that will</p> <p>16 result if the Acis CLOs are not reset to</p> <p>17 make them consistent with prevailing</p> <p>18 market conditions the Investor has not yet</p> <p>19 appeared in this case or taken any</p> <p>20 position in this bankruptcy case."</p> <p>21 Do you see that?</p> <p>22 A. I do.</p> <p>23 Q. Is that correct?</p> <p>24 MS. WEISGERBER: Objection to</p> <p>25 form.</p>

<p style="text-align: right;">Page 86</p> <p>1 Confidential - Pugatch</p> <p>2 A. Is what correct?</p> <p>3 Q. Well, I guess, I'm most</p> <p>4 concerned with this last part of the</p> <p>5 sentence. It starts with "The Investor</p> <p>6 has not yet appeared in this case or taken</p> <p>7 any position in the bankruptcy case."</p> <p>8 Do you agree with that?</p> <p>9 MS. WEISGERBER: Objection to</p> <p>10 form.</p> <p>11 Mike, if you want to look at the</p> <p>12 whole document, you're welcome to.</p> <p>13 This is not a document that's a</p> <p>14 HarbourVest-prepared document.</p> <p>15 BY MR. WILSON:</p> <p>16 Q. Maybe a better way of asking the</p> <p>17 question is: As of the date of this</p> <p>18 document, which was in October of 2018,</p> <p>19 had HarbourVest appeared in the Acis</p> <p>20 bankruptcy?</p> <p>21 A. No, we did not.</p> <p>22 Q. And had they asserted any</p> <p>23 positions regarding the Acis bankruptcy?</p> <p>24 A. Not through the court.</p> <p>25 MS. WEISGERBER: Objection to</p>	<p style="text-align: right;">Page 87</p> <p>1 Confidential - Pugatch</p> <p>2 form.</p> <p>3 Q. Okay. Had Highland encouraged</p> <p>4 HarbourVest to participate in the Acis</p> <p>5 bankruptcy?</p> <p>6 MS. WEISGERBER: Objection to</p> <p>7 form.</p> <p>8 A. No.</p> <p>9 Q. They did not?</p> <p>10 MS. WEISGERBER: Objection to</p> <p>11 form.</p> <p>12 Q. Highland did not encourage</p> <p>13 HarbourVest to participate in the Acis</p> <p>14 bankruptcy?</p> <p>15 A. When you say "participate," can</p> <p>16 you define that, please.</p> <p>17 Q. Well, appear in the case, as</p> <p>18 stated in this motion.</p> <p>19 A. No, they had not.</p> <p>20 Q. Did Harbour – I'm sorry – did</p> <p>21 Highland keep HarbourVest apprised of the</p> <p>22 events that occurred in the Acis</p> <p>23 bankruptcy?</p> <p>24 MS. WEISGERBER: Objection to</p> <p>25 form. I'm just going to restate my</p>
<p style="text-align: right;">Page 88</p> <p>1 Confidential - Pugatch</p> <p>2 objection to the extent you're asking</p> <p>3 questions about HarbourVest. This is</p> <p>4 Mr. Pugatch answering, based on his</p> <p>5 knowledge.</p> <p>6 A. We were kept informed from time</p> <p>7 to time throughout the Acis bankruptcy</p> <p>8 proceeding.</p> <p>9 Q. Well, did you, in fact, have</p> <p>10 weekly conference calls with Highland</p> <p>11 representatives regarding the Acis</p> <p>12 bankruptcy?</p> <p>13 MS. WEISGERBER: Objection to</p> <p>14 form.</p> <p>15 A. I don't recall them being</p> <p>16 weekly, no.</p> <p>17 Q. You can agree with me you</p> <p>18 participated in the conference calls with</p> <p>19 Highland regarding the Acis bankruptcy?</p> <p>20 A. Yes.</p> <p>21 MS. WEISGERBER: Same objection.</p> <p>22 Q. And on what, on what –</p> <p>23 MR. WILSON: Sorry. Strike</p> <p>24 that.</p> <p>25 Q. With what regularity would you</p>	<p style="text-align: right;">Page 89</p> <p>1 Confidential - Pugatch</p> <p>2 estimate those conference calls occurred,</p> <p>3 if it's not weekly?</p> <p>4 MS. WEISGERBER: Objection to</p> <p>5 form.</p> <p>6 A. From memory, maybe once, once a</p> <p>7 month on average. Sometimes more</p> <p>8 frequently, sometimes less frequently.</p> <p>9 Q. Did Highland provide you with</p> <p>10 documents and evidence that were filed in</p> <p>11 the Acis bankruptcy?</p> <p>12 MS. WEISGERBER: Objection to</p> <p>13 form.</p> <p>14 We're really starting to get</p> <p>15 pretty far afield here, John, from</p> <p>16 HarbourVest. You know, I'm not sure</p> <p>17 where you're going with this. This is</p> <p>18 a settlement motion that's teed up for</p> <p>19 the court.</p> <p>20 You're welcome to keep going,</p> <p>21 but at some point we're going to cut</p> <p>22 it off.</p> <p>23 MR. WILSON: Well, I think – I</p> <p>24 don't think I'm going to go too far</p> <p>25 down this path, but I think this</p>



<p style="text-align: right;">Page 90</p> <p>1 Confidential - Pugatch</p> <p>2 directly relates to the claims that</p> <p>3 HarbourVest has made. But I'll repeat</p> <p>4 my question.</p> <p>5 BY MR. WILSON:</p> <p>6 Q. Did Highland provide HarbourVest</p> <p>7 with documents and evidence that were</p> <p>8 filed in the Acis bankruptcy?</p> <p>9 MS. WEISGERBER: Objection to</p> <p>10 form.</p> <p>11 A. I don't recall what documents</p> <p>12 Highland may have provided to us, at that</p> <p>13 point in time.</p> <p>14 Q. I don't want you to recall</p> <p>15 specific documents that were provided, but</p> <p>16 did, did Highland provide documents from</p> <p>17 the Acis bankruptcy to HarbourVest?</p> <p>18 MS. WEISGERBER: Objection to</p> <p>19 form. Asked and answered.</p> <p>20 A. I don't recall.</p> <p>21 Q. You don't recall?</p> <p>22 A. (Nods.)</p> <p>23 Q. Would you dispute that between</p> <p>24 2018 and 2019 that Highland provided over</p> <p>25 40,000 pages of documents related to the</p>	<p style="text-align: right;">Page 91</p> <p>1 Confidential - Pugatch</p> <p>2 Acis bankruptcy to HarbourVest?</p> <p>3 MS. WEISGERBER: Objection to</p> <p>4 form, foundation.</p> <p>5 A. I don't know and I don't recall.</p> <p>6 Q. And the Acis plan became</p> <p>7 effective on February 1st, 2019. Is that</p> <p>8 your understanding?</p> <p>9 A. I believe so, yes.</p> <p>10 Q. And do you – I asked you this</p> <p>11 earlier, but I'm going to ask again. Do</p> <p>12 you have any understanding of what the</p> <p>13 value of HCLOF was, at that date?</p> <p>14 A. I don't recall.</p> <p>15 MS. WEISGERBER: Objection to</p> <p>16 form.</p> <p>17 Q. You don't?</p> <p>18 A. I don't recall, no.</p> <p>19 Q. And there was an injunction put</p> <p>20 in place in the Acis bankruptcy that</p> <p>21 prevented certain actions with respect to</p> <p>22 HCLOF, correct?</p> <p>23 MS. WEISGERBER: Objection to</p> <p>24 form, foundation.</p> <p>25 MR. MALONEY: Join.</p>
<p style="text-align: right;">Page 92</p> <p>1 Confidential - Pugatch</p> <p>2 A. Yes.</p> <p>3 Q. Now, I'm going to go back up to</p> <p>4 Paragraph 2. This says that Acis LP</p> <p>5 manages the Acis CLOs, that certain</p> <p>6 portfolio management agreement between</p> <p>7 Acis, and then it goes on. So what are</p> <p>8 the Acis CLOs, as it relates to the</p> <p>9 investment that HarbourVest made?</p> <p>10 MR. MALONEY: Objection to the</p> <p>11 form of the question.</p> <p>12 MS. WEISGERBER: Objection to</p> <p>13 form.</p> <p>14 A. The Acis CLOs – or HCLOF owned</p> <p>15 equity in certain of the Acis CLOs as a</p> <p>16 portion of its investment portfolio.</p> <p>17 Q. And I think you were trying to</p> <p>18 distinguish earlier between who the</p> <p>19 portfolio manager was. And that would</p> <p>20 depend on whether it was an Acis CLO or a</p> <p>21 Highland CLO; is that correct?</p> <p>22 MR. MALONEY: Objection to form.</p> <p>23 MS. WEISGERBER: Objection to</p> <p>24 form, misstates testimony.</p> <p>25 A. I was referencing the portfolio</p>	<p style="text-align: right;">Page 93</p> <p>1 Confidential - Pugatch</p> <p>2 manager of the underlying CLOs, yes.</p> <p>3 Q. But we can agree that Acis had</p> <p>4 responsibility for managing at least a</p> <p>5 portion of HCLOF, correct?</p> <p>6 A. Highland –</p> <p>7 MR. WILSON: Objection to form.</p> <p>8 MR. MALONEY: Objection to form</p> <p>9 as well, foundation, and legal</p> <p>10 conclusion.</p> <p>11 (Reporter clarification.)</p> <p>12 A. It's my understanding it's</p> <p>13 Highlands' subsidiaries, yes.</p> <p>14 Q. Okay. Well, I'm going to go</p> <p>15 down to Paragraph 4, at the top of your</p> <p>16 screen here where it says, "Recently</p> <p>17 William Scott, the director of HCLOF,</p> <p>18 testified that he wants to reset the Acis</p> <p>19 CLOs to bring them in line with current</p> <p>20 market interest rates, that the inability</p> <p>21 to do the reset is causing damages to</p> <p>22 HCLOF in the amount of approximately</p> <p>23 \$295,000 per week."</p> <p>24 Is that an accurate statement?</p> <p>25 MS. WEISGERBER: Objection to</p>

<p style="text-align: right;">Page 94</p> <p>1 Confidential - Pugatch</p> <p>2 form and foundation.</p> <p>3 MR. MALONEY: Mark Maloney.</p> <p>4 Object to form and foundation.</p> <p>5 A. I don't know. You'd have to ask</p> <p>6 William Scott.</p> <p>7 Q. Well, were you aware, I mean,</p> <p>8 there's a citation to a, well, I don't</p> <p>9 know if there's a citation on this one.</p> <p>10 But it says that he recently testified.</p> <p>11 Were you aware that he testified that he</p> <p>12 wanted to reset the Acis CLOs?</p> <p>13 MS. WEISGERBER: Same objection.</p> <p>14 We're really getting far afield.</p> <p>15 MR. WILSON: I'm just asking if</p> <p>16 he was aware that this statement</p> <p>17 occurred.</p> <p>18 A. At some point in time, yes, I</p> <p>19 became aware of that.</p> <p>20 Q. Okay. Do you agree that the</p> <p>21 inability to do a reset was causing</p> <p>22 damages in the amount of \$295,000 per</p> <p>23 week?</p> <p>24 MS. WEISGERBER: Objection to</p> <p>25 form and foundation. This is not a</p>	<p style="text-align: right;">Page 95</p> <p>1 Confidential - Pugatch</p> <p>2 HarbourVest-prepared document.</p> <p>3 MR. WILSON: Well, I understand</p> <p>4 that. I'm just asking if he agrees</p> <p>5 with it.</p> <p>6 A. I don't have enough information</p> <p>7 to assess that, specifically the \$295,000</p> <p>8 per week number.</p> <p>9 Q. I want to go down to Paragraph 7</p> <p>10 of this document, and this is going to be</p> <p>11 at the top of Page 5. It says</p> <p>12 "Mr. Ellington also testified that because</p> <p>13 it would be putting in additional capital</p> <p>14 in connection with any reset CLOs, the</p> <p>15 Investor," and we discussed that that's</p> <p>16 HarbourVest, "had the ability to start</p> <p>17 'calling the shots' and dictate the terms</p> <p>18 of any reset transactions."</p> <p>19 Do you agree with that?</p> <p>20 A. No.</p> <p>21 MS. WEISGERBER: Objection to</p> <p>22 form.</p> <p>23 Q. I want to go down to Paragraph</p> <p>24 9.</p> <p>25 It says, "The Trustee also needs</p>
<p style="text-align: right;">Page 96</p> <p>1 Confidential - Pugatch</p> <p>2 information regarding whether the Investor</p> <p>3 presently has any concerns about pursuing</p> <p>4 reset transactions with the Reorganized</p> <p>5 Acis and Brigade, under the plan now that</p> <p>6 Acis has been able to successfully serve</p> <p>7 as the portfolio manager for the Acis CLOs</p> <p>8 on a post-petition basis, and there are no</p> <p>9 impediments to the ability of the</p> <p>10 Reorganized Acis and Brigade to pursue a</p> <p>11 reset on the Acis CLOs."</p> <p>12 Do you know whether the Investor</p> <p>13 had any concerns about pursuing a reset?</p> <p>14 MS. WEISGERBER: Objection to</p> <p>15 form, foundation.</p> <p>16 A. The context of a reset or</p> <p>17 refinancing of the various CLOs in HCLOF</p> <p>18 was part of the original investment</p> <p>19 thesis. So there would not have been</p> <p>20 concerns about the ability to do so. Our</p> <p>21 concerns were more in the inability to do</p> <p>22 so, as a result of the Acis bankruptcy.</p> <p>23 Q. But here, you've got the Trustee</p> <p>24 representing in Paragraph 5, that</p> <p>25 according to the Trustee's Second Amended</p>	<p style="text-align: right;">Page 97</p> <p>1 Confidential - Pugatch</p> <p>2 Joint Plan, it provides for such a reset</p> <p>3 to be performed by the Reorganized Acis</p> <p>4 and supervised by Brigade Capital</p> <p>5 Management.</p> <p>6 And it appears to me that the</p> <p>7 Trustee is trying to get the Investor's</p> <p>8 position on whether a reset should be</p> <p>9 pursued. And I'm just asking you whether</p> <p>10 HarbourVest objected to a reset at this</p> <p>11 time?</p> <p>12 MS. WEISGERBER: I'm going to</p> <p>13 object to all of the colloquy before.</p> <p>14 I'm going to object to any extent</p> <p>15 Mike's being asked about what the</p> <p>16 Trustee wanted or viewed. If you want</p> <p>17 to ask your question in isolation, go</p> <p>18 ahead.</p> <p>19 Q. What was HarbourVest's position</p> <p>20 regarding a reset, as of the date that</p> <p>21 this was filed, and I'll look again,</p> <p>22 October 10, 2018?</p> <p>23 MS. WEISGERBER: Objection to</p> <p>24 form. Objection to the extent it's</p> <p>25 asking HarbourVest's position. And I</p>

<p style="text-align: right;">Page 98</p> <p>1 Confidential - Pugatch</p> <p>2 cannot conceive how this is relevant</p> <p>3 to the 9019 motion before the court</p> <p>4 right now.</p> <p>5 Nonetheless, Mike, if you have</p> <p>6 an answer, on behalf of yourself, you</p> <p>7 can answer.</p> <p>8 A. HarbourVest was a passive</p> <p>9 minority investor in HCLOF. It had no</p> <p>10 ability to control the underlying</p> <p>11 portfolio management or ability to reset,</p> <p>12 refinance, or call in any of the equity of</p> <p>13 the underlying CLOs. That was all under</p> <p>14 the purview of Highland.</p> <p>15 Q. Did you understand that</p> <p>16 Mr. Ellington had given sworn testimony</p> <p>17 that the Investor is the party calling the</p> <p>18 shots for HCLOF, with respect to any reset</p> <p>19 transactions?</p> <p>20 MS. WEISGERBER: Objection to</p> <p>21 form.</p> <p>22 A. I did become aware of it, yes.</p> <p>23 Q. When did you become aware of</p> <p>24 that?</p> <p>25 A. At some point subsequent to that</p>	<p style="text-align: right;">Page 99</p> <p>1 Confidential - Pugatch</p> <p>2 testimony being given.</p> <p>3 Q. But was it when you read this</p> <p>4 motion that we're looking at as</p> <p>5 Exhibit 10?</p> <p>6 MS. WEISGERBER: Objection to</p> <p>7 form.</p> <p>8 A. It may have been. I don't</p> <p>9 recall the exact time or medium that I</p> <p>10 became aware of that.</p> <p>11 Q. Was a deposition given as a</p> <p>12 result of this motion?</p> <p>13 MS. WEISGERBER: Objection to</p> <p>14 form. If you have the whole document,</p> <p>15 Mike, that may make sense.</p> <p>16 MR. WILSON: Well, this motion</p> <p>17 at the top says it's a Motion for 2004</p> <p>18 Examination of Investor. And then</p> <p>19 attached to this motion are some</p> <p>20 document requests, and then deposition</p> <p>21 topics for a corporate representative</p> <p>22 of the Investor, and then a proposed</p> <p>23 order.</p> <p>24 BY MR. WILSON:</p> <p>25 Q. Do you recall whether a</p>
<p style="text-align: right;">Page 100</p> <p>1 Confidential - Pugatch</p> <p>2 deposition was given, after this motion</p> <p>3 was filed?</p> <p>4 A. Yes.</p> <p>5 Q. And who was the designated</p> <p>6 deponent?</p> <p>7 A. I was.</p> <p>8 Q. And were documents produced, as</p> <p>9 a result of this?</p> <p>10 A. Yes, there were.</p> <p>11 Q. And were you asked at that</p> <p>12 deposition what the Investor's position on</p> <p>13 a reset was?</p> <p>14 MS. WEISGERBER: Objection to</p> <p>15 form.</p> <p>16 If you recall.</p> <p>17 A. I don't recall specifically that</p> <p>18 question being asked.</p> <p>19 Q. Well, do you know what</p> <p>20 the Debtor's position -- I'm sorry, the</p> <p>21 Debtor's -- the Investor's position on a</p> <p>22 reset was as of that day?</p> <p>23 MS. WEISGERBER: Objection to</p> <p>24 form. Asked and answered.</p> <p>25 A. I would just say again, in</p>	<p style="text-align: right;">Page 101</p> <p>1 Confidential - Pugatch</p> <p>2 general, the original investment thesis</p> <p>3 here was predicated on a refinancing reset</p> <p>4 of the various CLOs, and we were not in</p> <p>5 control as a passive minority investor</p> <p>6 here to --</p> <p>7 Q. Well, you said you weren't in</p> <p>8 control, but what would HarbourVest's</p> <p>9 preference have been?</p> <p>10 MS. WEISGERBER: Objection to</p> <p>11 form.</p> <p>12 A. I do not recall.</p> <p>13 MS. WEISGERBER: If you recall.</p> <p>14 A. I don't recall the specifics</p> <p>15 around what Acis CLO were referring to</p> <p>16 here or what the specific implications of</p> <p>17 a reset were at that time; but regardless,</p> <p>18 that was a decision for the investment</p> <p>19 manager of HCLO.</p> <p>20 Q. But was it your opinion, your</p> <p>21 personal opinion, that a reset was</p> <p>22 appropriate?</p> <p>23 MS. WEISGERBER: Objection to</p> <p>24 form.</p> <p>25 A. Again, we were not the portfolio</p>

<p style="text-align: right;">Page 102</p> <p>1 Confidential - Pugatch</p> <p>2 manager of HCLOF. We were not in control</p> <p>3 of those decisions or making</p> <p>4 recommendations on those decisions. That</p> <p>5 was the delegated authority of Highland,</p> <p>6 as the investment manager.</p> <p>7 Q. I'm not asking for that. I'm</p> <p>8 asking for your personal feelings toward a</p> <p>9 reset.</p> <p>10 MS. WEISGERBER: Same objection.</p> <p>11 He's only answering on behalf of</p> <p>12 himself, and it's been asked and</p> <p>13 answered three times since.</p> <p>14 MR. WILSON: Well, he hasn't</p> <p>15 answered the question. He's just told</p> <p>16 me they don't have the authority to do</p> <p>17 the reset.</p> <p>18 MS. WEISGERBER: And he told you</p> <p>19 the other information he'd be required</p> <p>20 to even have an opinion on it. So</p> <p>21 same objection stands. It's not a</p> <p>22 specific enough question for him.</p> <p>23 Mike, you're welcome, if you</p> <p>24 have, if you have an answer, you're</p> <p>25 welcome to give it.</p>	<p style="text-align: right;">Page 103</p> <p>1 Confidential - Pugatch</p> <p>2 A. Yeah, the investment guidelines</p> <p>3 of HCLOF, from the documents that we</p> <p>4 signed at the time we entered into the</p> <p>5 transaction, laid out the specific, again,</p> <p>6 investment guidelines that HCLOF would be</p> <p>7 guided under, including the opportunity to</p> <p>8 refinance or reset various CLOs over time,</p> <p>9 in accordance with Highland's, you know,</p> <p>10 expectations and ultimate decision to do</p> <p>11 so.</p> <p>12 Q. But did you believe, at this</p> <p>13 time, that a reset was appropriate?</p> <p>14 MS. WEISGERBER: Objection to</p> <p>15 form. This is asked and answered</p> <p>16 several times now, I think we should</p> <p>17 move on. He's given you an answer.</p> <p>18 MR. WILSON: Well, I want to</p> <p>19 know what his personal opinion was</p> <p>20 about whether the reset was</p> <p>21 appropriate.</p> <p>22 A. What reset are you referring to?</p> <p>23 Q. A reset as of October 10, 2018.</p> <p>24 At that time, did you believe that a reset</p> <p>25 was appropriate?</p>
<p style="text-align: right;">Page 104</p> <p>1 Confidential - Pugatch</p> <p>2 A. A reset of what?</p> <p>3 MS. WEISGERBER: Same objection.</p> <p>4 Q. A reset as been discussed all</p> <p>5 through this motion, the same reset we're</p> <p>6 talking about.</p> <p>7 MS. WEISGERBER: Objection.</p> <p>8 Same objections. I just don't see how</p> <p>9 he could possibly answer this vague</p> <p>10 question.</p> <p>11 Q. Okay. So William Scott,</p> <p>12 director of HCLOF, testified that he</p> <p>13 wanted to reset the Acis CLOs because if</p> <p>14 they don't, they are losing \$295,000 a</p> <p>15 week.</p> <p>16 Did you think that a reset was</p> <p>17 appropriate in line with what Mr. Scott</p> <p>18 believed?</p> <p>19 MR. MALONEY: Objection to form,</p> <p>20 foundation.</p> <p>21 MS. WEISGERBER: Same</p> <p>22 objections. And asked and answered</p> <p>23 numerous times.</p> <p>24 A. We were not managing the</p> <p>25 portfolio. We were an investor in a</p>	<p style="text-align: right;">Page 105</p> <p>1 Confidential - Pugatch</p> <p>2 company, an investment company that was</p> <p>3 managing this. We were not, I was not</p> <p>4 proximate enough to any of the underlying</p> <p>5 happenings of the look through CLO</p> <p>6 positions of HCLOF to have an informed</p> <p>7 view on this, at this time.</p> <p>8 Q. Is your testimony that you did</p> <p>9 not have an opinion as to whether the Acis</p> <p>10 CLO should be reset in late 2018?</p> <p>11 MS. WEISGERBER: Objection to</p> <p>12 form. Misstates testimony.</p> <p>13 A. My view is that the original</p> <p>14 investment guidelines here called for a</p> <p>15 reset or refinance of the CLOs and that</p> <p>16 Highland was subsequently in full control</p> <p>17 of whether or not to pursue this, and we,</p> <p>18 HarbourVest, as an investor had no ability</p> <p>19 to object or to force that on a go-forward</p> <p>20 basis.</p> <p>21 MR. WILSON: Objection.</p> <p>22 Nonresponsive.</p> <p>23 Q. I want to know your personal</p> <p>24 opinion of whether you thought a reset was</p> <p>25 appropriate in October of 2018.</p>

<p style="text-align: right;">Page 106</p> <p>1 Confidential - Pugatch</p> <p>2 MR. MORRIS: Objection to the</p> <p>3 form of the question. That's been</p> <p>4 asked and answered.</p> <p>5 MR. WILSON: He has yet to give</p> <p>6 his answer to –</p> <p>7 MR. MORRIS: He just told you he</p> <p>8 didn't have enough information. He</p> <p>9 just told you that, crystal clear.</p> <p>10 MR. WILSON: Well, I'm not going</p> <p>11 to argue with you, John, but I just</p> <p>12 want an answer to my question.</p> <p>13 His answer, he wouldn't agree</p> <p>14 with my, with my summation that he had</p> <p>15 no opinion, so I just want to know</p> <p>16 what his opinion is.</p> <p>17 MS. WEISGERBER: Same</p> <p>18 objections.</p> <p>19 You're not giving him enough</p> <p>20 information to answer the question,</p> <p>21 and at this point, it would be</p> <p>22 speculation. We can just keep going</p> <p>23 in circles on this, but your –</p> <p>24 MR. WILSON: His opinion would</p> <p>25 be speculation?</p>	<p style="text-align: right;">Page 107</p> <p>1 Confidential - Pugatch</p> <p>2 MS. WEISGERBER: He said that,</p> <p>3 he actually testified at some point</p> <p>4 that he doesn't recall specifics of</p> <p>5 the time, so that was another piece of</p> <p>6 the puzzle.</p> <p>7 I mean, I don't want to be</p> <p>8 coaching the witness or giving</p> <p>9 testimony here, but I think you're not</p> <p>10 listening to the things he's saying,</p> <p>11 John, just because you don't like it.</p> <p>12 BY MR. WILSON:</p> <p>13 Q. Mr. Pugatch, did you have an</p> <p>14 opinion, in October of 2019, about whether</p> <p>15 the Acis CLOs should be reset?</p> <p>16 MS. WEISGERBER: Objection to</p> <p>17 form.</p> <p>18 A. I don't recall any definitive</p> <p>19 opinion I would have had, but as stated,</p> <p>20 was not proximate enough to have an</p> <p>21 informed opinion, in any event.</p> <p>22 Q. And to your knowledge, have the</p> <p>23 Acis CLOs ever been reset?</p> <p>24 MS. WEISGERBER: Objection to</p> <p>25 form, foundation.</p>
<p style="text-align: right;">Page 108</p> <p>1 Confidential - Pugatch</p> <p>2 A. I do not believe that any of the</p> <p>3 Acis CLOs were ever reset.</p> <p>4 Q. All right. So who negotiated</p> <p>5 this claim, the settlement of this claim</p> <p>6 on behalf of HarbourVest?</p> <p>7 A. I did.</p> <p>8 Q. And who negotiated for the</p> <p>9 Debtor?</p> <p>10 A. Jim Seery.</p> <p>11 Q. And when did those negotiations</p> <p>12 begin?</p> <p>13 A. It started sometime in November,</p> <p>14 I believe.</p> <p>15 Q. And are you aware that Jim Seery</p> <p>16 has ever taken the position that the</p> <p>17 HarbourVest claim was worthless?</p> <p>18 MS. WEISGERBER: Objection to</p> <p>19 form, foundation.</p> <p>20 A. No, I'm not aware of that.</p> <p>21 Q. Has Jim Seery ever offered</p> <p>22 \$5 million to settle the HarbourVest</p> <p>23 claim?</p> <p>24 A. Not to my knowledge.</p> <p>25 MS. WEISGERBER: Objection to</p>	<p style="text-align: right;">Page 109</p> <p>1 Confidential - Pugatch</p> <p>2 form.</p> <p>3 MR. WILSON: I'm going to send</p> <p>4 out Exhibit 11.</p> <p>5 (Whereupon, Exhibit 11,</p> <p>6 Declaration of John A. Morris in</p> <p>7 Support of the Debtor's Motion For</p> <p>8 Entry of an Order Approving Settlement</p> <p>9 With Harbourvest (Claim Nos. 143, 147,</p> <p>10 149, 150, 153, 154) and Authorizing</p> <p>11 Actions, 82 pages, was marked for</p> <p>12 identification.)</p> <p>13 BY MR. WILSON:</p> <p>14 Q. I want pull this up on the</p> <p>15 screen share. This Exhibit 11 is the</p> <p>16 Declaration of John Morris in Support of</p> <p>17 the Debtor's 9019 Motion, bears</p> <p>18 Document 1631. And attached to this</p> <p>19 exhibit is a trim cut copy of the</p> <p>20 Settlement Agreement executed December 23,</p> <p>21 2020.</p> <p>22 And the Settlement Agreement has</p> <p>23 Paragraph 1, Settlement of Claims, that</p> <p>24 HarbourVest is going to receive a</p> <p>25 \$45 million unsecured, general unsecured</p>



<p style="text-align: right;">Page 110</p> <p>1 Confidential - Pugatch</p> <p>2 claim, and a \$35 million subordinated</p> <p>3 claim.</p> <p>4 And then Part B of that</p> <p>5 paragraph states that HarbourVest is going</p> <p>6 to transfer all its rights, titles, and</p> <p>7 interests to its investment in CLOF to the</p> <p>8 Debtor or its nominee.</p> <p>9 Is that your understanding of</p> <p>10 the general terms of this settlement?</p> <p>11 MS. WEISGERBER: Objection to</p> <p>12 form.</p> <p>13 A. Yes, it is.</p> <p>14 Q. Okay. And also in Paragraph 5,</p> <p>15 Each HarbourVest party agrees that it will</p> <p>16 vote all of HarbourVest claims held by</p> <p>17 such HarbourVest party to accept the plan.</p> <p>18 And I won't read all of that.</p> <p>19 But the gist of this paragraph is that</p> <p>20 HarbourVest is going to vote for the</p> <p>21 Debtor's proposed plan; is that correct?</p> <p>22 MS. WEISGERBER: Objection to</p> <p>23 form.</p> <p>24 A. Yes, correct.</p> <p>25 Q. And how did that term come to be</p>	<p style="text-align: right;">Page 111</p> <p>1 Confidential - Pugatch</p> <p>2 in this Settlement Agreement?</p> <p>3 MS. WEISGERBER: Objection to</p> <p>4 form.</p> <p>5 A. I believe it was put there as</p> <p>6 part of the drafting of the ultimate</p> <p>7 agreement to the fund.</p> <p>8 Q. Well, whose suggestion was it</p> <p>9 that it be added to the drafting?</p> <p>10 MS. WEISGERBER: Objection to</p> <p>11 form.</p> <p>12 A. I believe that it came from</p> <p>13 Debtor's counsel, as they took the lead on</p> <p>14 drafting the documentation here.</p> <p>15 Q. Did Jim Seery ever tell you that</p> <p>16 it was important to him that HarbourVest</p> <p>17 vote in support of the plan?</p> <p>18 MS. WEISGERBER: Objection to</p> <p>19 form.</p> <p>20 A. I don't recall that ever being</p> <p>21 discussed. Certainly it was not the</p> <p>22 prominent feature of any of the</p> <p>23 discussions or negotiations that I ever</p> <p>24 had with Jim.</p> <p>25 Q. Okay.</p>
<p style="text-align: right;">Page 112</p> <p>1 Confidential - Pugatch</p> <p>2 MR. WILSON: I'm going to take a</p> <p>3 ten-minute break, and I think I'm</p> <p>4 almost ready to wrap up. So I want to</p> <p>5 stop my screen share. And let's,</p> <p>6 well, let's start back at 2:30, and I</p> <p>7 think I'll be quick. Thank you.</p> <p>8 (Recess taken.)</p> <p>9 BY MR. WILSON:</p> <p>10 Q. Mr. Pugatch, earlier you</p> <p>11 testified that consistent with your</p> <p>12 declaration you filed that as of August</p> <p>13 31, 2020, the value of HCLOF was</p> <p>14 \$44.5 million. And then if we look at --</p> <p>15 I don't remember which --</p> <p>16 Okay. So this would have been</p> <p>17 Exhibit 7. I'll do a share screen.</p> <p>18 As of November 15, 2017 these</p> <p>19 shares were purchased at \$1.02 and change</p> <p>20 apiece, and there were a total number of</p> <p>21 143 million shares.</p> <p>22 Was the value of this investment</p> <p>23 roughly \$150 million, as of November 15,</p> <p>24 2017?</p> <p>25 MS. WEISGERBER: Objection to</p>	<p style="text-align: right;">Page 113</p> <p>1 Confidential - Pugatch</p> <p>2 form. Foundation.</p> <p>3 MR. MALONEY: Join.</p> <p>4 MS. WEISGERBER: I don't know,</p> <p>5 Mike, if you're comfortable doing that</p> <p>6 math or what.</p> <p>7 A. Yes, approximately that's</p> <p>8 correct.</p> <p>9 Q. Okay. And you know, and I've</p> <p>10 read your papers and you talk about</p> <p>11 attorneys' fees that you say weren't</p> <p>12 appropriate to be charged to HCLOF and</p> <p>13 that part of it, but as to the loss of</p> <p>14 value of the actual investment, what's</p> <p>15 your understanding of what led to that?</p> <p>16 MS. WEISGERBER: Objection to</p> <p>17 form. Objection to the extent it</p> <p>18 calls for a legal conclusion.</p> <p>19 Mike, to the extent you have a</p> <p>20 nonlegal opinion on that, that's not</p> <p>21 based on conversations with counsel,</p> <p>22 you can answer.</p> <p>23 A. Yeah, I think a lot of the value</p> <p>24 erosion was due to the inability to</p> <p>25 refinance, reset a number of the</p>

<p style="text-align: right;">Page 114</p> <p>1 Confidential - Pugatch</p> <p>2 underlying CLOs that was part of the</p> <p>3 original investment thesis here, largely</p> <p>4 as a result of the ongoing litigation,</p> <p>5 that Highland was involved in, and the</p> <p>6 subsequent Acis bankruptcy.</p> <p>7 Q. And so during the period of time</p> <p>8 when the injunction prohibited certain</p> <p>9 actions with respect to this investment,</p> <p>10 is it your opinion that this investment</p> <p>11 was losing value?</p> <p>12 MR. MALONEY: Objection.</p> <p>13 MS. WEISGERBER: Objection to</p> <p>14 form.</p> <p>15 A. Can you repeat the question,</p> <p>16 John?</p> <p>17 Q. Well, I guess I want to know,</p> <p>18 like, in a, on a timeline kind of basis,</p> <p>19 do you think that the significant</p> <p>20 reduction of value occurred prior to or</p> <p>21 after the confirmation of the Acis plan on</p> <p>22 February 1, 2019?</p> <p>23 MS. WEISGERBER: Objection to</p> <p>24 form. Objection to the extent it</p> <p>25 calls for a legal conclusion.</p>	<p style="text-align: right;">Page 115</p> <p>1 Confidential - Pugatch</p> <p>2 You can give your lay opinion,</p> <p>3 if you have one, Mike.</p> <p>4 A. I think it's all been as a</p> <p>5 result of the events leading up to the</p> <p>6 Acis bankruptcy, including the inability</p> <p>7 to refinance or reset the CLOs which would</p> <p>8 have been to the benefit of the CLO equity</p> <p>9 holders including HCLOF.</p> <p>10 Q. And so what, what was the cause</p> <p>11 of the inability to reset?</p> <p>12 MS. WEISGERBER: Same</p> <p>13 objections: form, foundation, legal</p> <p>14 conclusion.</p> <p>15 If you have a non-privileged</p> <p>16 answer, Mike, go ahead.</p> <p>17 A. Yeah, my understanding was</p> <p>18 originally the TRO, preventing Highland</p> <p>19 and HCLOF from pursuing that, and then</p> <p>20 subsequent to the Acis bankruptcy ruling,</p> <p>21 a similar injunction that remained around</p> <p>22 the inability for the equity holders of</p> <p>23 those CLOs to redeem or refinance or</p> <p>24 reset.</p> <p>25 Q. So do you -- is there any</p>
<p style="text-align: right;">Page 116</p> <p>1 Confidential - Pugatch</p> <p>2 component, in your opinion, of the loss of</p> <p>3 value of these investments due to</p> <p>4 portfolio mismanagement?</p> <p>5 MS. WEISGERBER: Objection to</p> <p>6 form, foundation, legal conclusion, or</p> <p>7 expert opinion, calling for</p> <p>8 speculation.</p> <p>9 If you have a view, Mike.</p> <p>10 A. Yeah. Can you be more specific</p> <p>11 with the question, John?</p> <p>12 Q. Well, I'll ask it a different</p> <p>13 way.</p> <p>14 Do you think that portfolio</p> <p>15 mismanagement was a portion of the cause</p> <p>16 of the reduction in value?</p> <p>17 MS. WEISGERBER: Same objection.</p> <p>18 A. I can't speculate as to, you</p> <p>19 know, the underlying management decisions</p> <p>20 around the CLOs, but what I do know is</p> <p>21 that the mismanagement and</p> <p>22 misrepresentations at the HCLOF level,</p> <p>23 that would ultimately result in the Acis</p> <p>24 bankruptcy and subsequent to that, the TRO</p> <p>25 and the inability to refinance or reset</p>	<p style="text-align: right;">Page 117</p> <p>1 Confidential - Pugatch</p> <p>2 that has been the, far and away, the</p> <p>3 largest contributor to loss of value</p> <p>4 within the portfolio.</p> <p>5 Q. One of the allegations that</p> <p>6 HarbourVest has made is that Highland</p> <p>7 improperly changed the portfolio manager.</p> <p>8 Is it your opinion that if that had not</p> <p>9 been done, the portfolio manager had not</p> <p>10 been changed at the inception of</p> <p>11 HarbourVest's investment, that that would</p> <p>12 have preserved any value of this fund?</p> <p>13 MR. MORRIS: Objection to the</p> <p>14 form of the question.</p> <p>15 MS. WEISGERBER: Same objection.</p> <p>16 Calling for speculation, hypothetical</p> <p>17 lay opinion.</p> <p>18 If you have testimony, go ahead,</p> <p>19 Mike.</p> <p>20 A. Sorry, could you just repeat the</p> <p>21 question, John? I want to make sure I'm</p> <p>22 answering it correctly.</p> <p>23 Q. I guess I just want to know, and</p> <p>24 I think you kind of hinted at this a</p> <p>25 little bit earlier today, but I guess what</p>

<p style="text-align: right;">Page 118</p> <p>1 Confidential - Pugatch</p> <p>2 I really want to know is do you think that</p> <p>3 the particular portfolio manager made a</p> <p>4 difference in the loss of value that HCLOF</p> <p>5 suffered?</p> <p>6 MS. WEISGERBER: Same</p> <p>7 objections.</p> <p>8 A. Again, it sounds like you're</p> <p>9 asking a different question there than</p> <p>10 what I thought I understood your question</p> <p>11 to be initially. What I would say to that</p> <p>12 is the decision originally to change the</p> <p>13 portfolio manager, and ultimately the</p> <p>14 events that took place following the</p> <p>15 Arbitration Award for Mr. Terry, resulted</p> <p>16 in the subsequent Acis bankruptcy, which</p> <p>17 in turn has led to the destruction of</p> <p>18 value, because of the inability to</p> <p>19 refinance or reset, the underlying CLOs.</p> <p>20 Q. So HarbourVest is not alleging</p> <p>21 that the portfolio manager made any</p> <p>22 particular decisions or participated in</p> <p>23 any mismanagement that led to reduction in</p> <p>24 value?</p> <p>25 MS. WEISGERBER: Objection to</p>	<p style="text-align: right;">Page 119</p> <p>1 Confidential - Pugatch</p> <p>2 form.</p> <p>3 A. When you're asking about</p> <p>4 portfolio manager, are we referring to the</p> <p>5 portfolio manager at the underlying CLO</p> <p>6 level or at the HCLOF level? I think</p> <p>7 there are two different levels here of</p> <p>8 portfolio management.</p> <p>9 Q. Well, I'm talking about the</p> <p>10 portfolio manager, and you can tell me</p> <p>11 which one it is, but which portfolio</p> <p>12 manager has the ability to, to impact the</p> <p>13 performance of these funds?</p> <p>14 MR. MORRIS: Objection.</p> <p>15 A. If you're referring to HCLOF,</p> <p>16 the –</p> <p>17 MS. WEISGERBER: Objection to</p> <p>18 form.</p> <p>19 A. – investment manager, or the</p> <p>20 portfolio manager of HCLOF has the ability</p> <p>21 to drive value creation by virtue of its</p> <p>22 equity position in the underlying CLOs.</p> <p>23 Q. Well, which portfolio manager</p> <p>24 makes the day-to-day decisions about</p> <p>25 selling assets, trading assets, that, that</p>
<p style="text-align: right;">Page 120</p> <p>1 Confidential - Pugatch</p> <p>2 I guess –</p> <p>3 A. If you're referring to</p> <p>4 underlying credits, that would be the</p> <p>5 portfolio manager in each of the</p> <p>6 individual CLOs. The impact in value to</p> <p>7 the equity investment in the CLOs is a</p> <p>8 decision at the HCLOF level, where the</p> <p>9 majority of that value erosion has</p> <p>10 resulted from the inability to refinance</p> <p>11 or reset those CLO entities.</p> <p>12 Q. And that's what we're talking</p> <p>13 about when you said that they, that</p> <p>14 Highland changed the portfolio manager,</p> <p>15 you're talking about at the HCLOF level,</p> <p>16 right?</p> <p>17 MS. WEISGERBER: Objection to</p> <p>18 form.</p> <p>19 A. Well, I was responding to the</p> <p>20 question that I thought you asked. I</p> <p>21 wasn't necessarily stating that.</p> <p>22 Q. I guess all I'm really trying to</p> <p>23 do here is just understand HarbourVest's</p> <p>24 position. And it sounds to me, and</p> <p>25 correct me if I'm wrong, it sounds to me</p>	<p style="text-align: right;">Page 121</p> <p>1 Confidential - Pugatch</p> <p>2 that that you're saying is that the</p> <p>3 diminution of value wasn't attributable to</p> <p>4 poor investment decisions by a portfolio</p> <p>5 manager, as much as it was the</p> <p>6 consequences in the Acis bankruptcy of the</p> <p>7 change in portfolio manager; is that fair?</p> <p>8 MS. WEISGERBER: Objection to</p> <p>9 form. Misstates testimony.</p> <p>10 A. Yes, it is. That is my general</p> <p>11 understanding, yes.</p> <p>12 MR. WILSON: Okay. No further</p> <p>13 questions.</p> <p>14 MR. MORRIS: All right. Well,</p> <p>15 thank you very much.</p> <p>16 THE REPORTER: Does anybody have</p> <p>17 any other questions?</p> <p>18 MR. KANE: Yes. This is John</p> <p>19 Kane with CLO Holdco. I'll jump on</p> <p>20 video. I've got some questions, but</p> <p>21 I'm going to be relatively short. If</p> <p>22 anybody else has a little bit heavier</p> <p>23 schedule, let me know.</p> <p>24 All right. I'll take that as a</p> <p>25 go-ahead.</p>



<p style="text-align: right;">Page 122</p> <p>1 Confidential - Pugatch</p> <p>2 EXAMINATION</p> <p>3 BY MR. KANE:</p> <p>4 Q. This is John Kane. I represent</p> <p>5 CLO Holdco.</p> <p>6 Hi, Mike Pugatch. It's nice to</p> <p>7 talk to you.</p> <p>8 A. Likewise.</p> <p>9 Q. I just wanted to briefly</p> <p>10 confirm. I believe you testified you</p> <p>11 participated in negotiations that lead to</p> <p>12 the Settlement Agreement, that is part of</p> <p>13 the 9019 motion, before the bankruptcy</p> <p>14 court; is that correct?</p> <p>15 A. Correct.</p> <p>16 Q. And did you actively negotiate</p> <p>17 the terms of that Settlement Agreement?</p> <p>18 A. Yes.</p> <p>19 Q. As in dollar amounts, what the</p> <p>20 consideration exchanged, how it would</p> <p>21 work, that kind of stuff, obviously with</p> <p>22 the assistance of counsel?</p> <p>23 A. Yes. All of that. The</p> <p>24 negotiations were, you know, over the</p> <p>25 course of a number of weeks and a number</p>	<p style="text-align: right;">Page 123</p> <p>1 Confidential - Pugatch</p> <p>2 of conversations directly with the Debtor,</p> <p>3 with counsel, all-hands calls, et cetera.</p> <p>4 Q. Okay. And as part of that in</p> <p>5 the Settlement Agreement, you say the</p> <p>6 HarbourVest entities were members in HCLOF</p> <p>7 are in essence selling their shares to the</p> <p>8 Debtor, and also in exchange getting some</p> <p>9 claims back in the Debtor's plan. Is that</p> <p>10 a fair summary?</p> <p>11 MS. WEISGERBER: Objection to</p> <p>12 form. Compound question.</p> <p>13 Q. Let me ask it a different way.</p> <p>14 A. Can you re-ask that, please?</p> <p>15 Q. Yeah. I'm happy to do that.</p> <p>16 Why don't you describe for me</p> <p>17 how you would summarize that settlement?</p> <p>18 A. Largely, as I think you just</p> <p>19 described it, which was in exchange for,</p> <p>20 in exchange for the, both the unsecured</p> <p>21 creditors' claim, and subordinated</p> <p>22 creditors' claim, that settlement value is</p> <p>23 in exchange for us transferring the</p> <p>24 interest in HCLOF to the Debtor, as part</p> <p>25 of that overall negotiating package.</p>
<p style="text-align: right;">Page 124</p> <p>1 Confidential - Pugatch</p> <p>2 Q. And what would you estimate, I</p> <p>3 going to have to imagine, let me rephrase</p> <p>4 the question.</p> <p>5 Have you guys done kind of an</p> <p>6 internal best guess of what your unsecured</p> <p>7 and subordinated claims would be, under</p> <p>8 the plan, the value?</p> <p>9 MS. WEISGERBER: Objection.</p> <p>10 Objection to form.</p> <p>11 A. Just to be clear, John, are you</p> <p>12 referring to the expected recovery value</p> <p>13 of our claims?</p> <p>14 Q. Yes, sir.</p> <p>15 MS. WEISGERBER: Objection to</p> <p>16 form. Can we just clarify, so you're</p> <p>17 talking about what they'll recover</p> <p>18 ultimately? Is that the question,</p> <p>19 John? I'm confused myself. I just</p> <p>20 want to be sure I am following.</p> <p>21 MR. KANE: Yeah. So I'm asking</p> <p>22 Mike how much he believes, based on</p> <p>23 his analysis, that HarbourVest is</p> <p>24 likely to recover from the \$45 million</p> <p>25 allowed general unsecured claim and</p>	<p style="text-align: right;">Page 125</p> <p>1 Confidential - Pugatch</p> <p>2 \$35 million allowed subordinated</p> <p>3 claim, if the settlement is approved</p> <p>4 and the plan is confirmed.</p> <p>5 MS. WEISGERBER: Objection to</p> <p>6 form.</p> <p>7 But you can answer, if you have</p> <p>8 an answer, Mike.</p> <p>9 A. We do have a sense. It's really</p> <p>10 a range of projected outcomes, as you can</p> <p>11 imagine, based on the recoveries, largely</p> <p>12 informed by conversations with the Debtor.</p> <p>13 Q. And what is that range of value?</p> <p>14 MS. WEISGERBER: Objection to</p> <p>15 form.</p> <p>16 A. Our understanding, again, based</p> <p>17 on those conversations, is that the</p> <p>18 general unsecured claim could be valued in</p> <p>19 a 75 to 80 cents on the dollar recovery.</p> <p>20 And then a, you know, that the junior</p> <p>21 class claim is really sort of upside</p> <p>22 potential, to the extent there is more</p> <p>23 recovery or more asset value of the</p> <p>24 estate, for the benefit of creditors over</p> <p>25 time.</p>

<p style="text-align: right;">Page 126</p> <p>1 Confidential - Pugatch</p> <p>2 Q. What is your understanding of</p> <p>3 the current value of the HarbourVest</p> <p>4 shares in HCLOF that would be transferred</p> <p>5 under this Agreement?</p> <p>6 A. It's roughly \$22.5 million of</p> <p>7 their value.</p> <p>8 Q. So doing a little bit of, you</p> <p>9 know, back-of-the-table-cloth math, how do</p> <p>10 you allocate value between the releases</p> <p>11 that you are receiving and the shares that</p> <p>12 you are transferring?</p> <p>13 MR. KANE: I'm sorry. Let me</p> <p>14 rephrase that. Let me ask that</p> <p>15 question differently.</p> <p>16 Q. In addition to the claims under</p> <p>17 the plan, HarbourVest is providing the</p> <p>18 Debt – sorry, in addition to the shares</p> <p>19 that are being transferred, HarbourVest is</p> <p>20 providing to the Debtor certain releases</p> <p>21 for its litigation claims; is that</p> <p>22 correct?</p> <p>23 MS. WEISGERBER: Objection to</p> <p>24 form.</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 127</p> <p>1 Confidential - Pugatch</p> <p>2 Q. So how has HarbourVest allocated</p> <p>3 value, as far as this Settlement Agreement</p> <p>4 is concerned?</p> <p>5 And to make sure we're on the</p> <p>6 same page about what I'm asking,</p> <p>7 HarbourVest is trading a bundle of sticks,</p> <p>8 right? And there's really two things</p> <p>9 within that bundle of sticks, and please</p> <p>10 confirm that's correct, you're trading</p> <p>11 shares, and in addition, releases; is that</p> <p>12 right? In exchange you're getting back</p> <p>13 claims that have a potential future value.</p> <p>14 So, how have you allocated value</p> <p>15 among the shares transferred and the</p> <p>16 releases that are being granted?</p> <p>17 MR. MORRIS: Objection.</p> <p>18 MS. WEISGERBER: Objection.</p> <p>19 You can go ahead, Mike.</p> <p>20 A. Yeah. So ultimately we looked</p> <p>21 at it as a package, and so it was less</p> <p>22 about the attribution of value between the</p> <p>23 two different sticks, as you described it,</p> <p>24 and more about the overall package value</p> <p>25 in exchange for the transfer of our</p>
<p style="text-align: right;">Page 128</p> <p>1 Confidential - Pugatch</p> <p>2 interest and the release of the claims</p> <p>3 that we had outstanding as the Debtor.</p> <p>4 MR. KANE: Now, I want to turn</p> <p>5 your attention to what I've included</p> <p>6 in the chat. You can pull it down</p> <p>7 pretty easily if you want. But it</p> <p>8 would be Holdco Depo Exhibit 2. If</p> <p>9 that would be easier than a screen</p> <p>10 share, if you'd like, I'm happy to do</p> <p>11 that as well.</p> <p>12 MS. WEISGERBER: Which document</p> <p>13 is it, John? Because I just can't</p> <p>14 pull stuff off the Zoom right now.</p> <p>15 MR. KANE: Oh, I'm sorry. It's</p> <p>16 the Settlement Agreement with the</p> <p>17 attached exhibits. I can share my</p> <p>18 screen so we're all on the same page.</p> <p>19 Just to confirm we're looking at</p> <p>20 the same thing, here's the Settlement</p> <p>21 Agreement. There's a docket entry at</p> <p>22 the top so you can see it, 1631 filed</p> <p>23 by the Debtor 12/24/20.</p> <p>24 This is Exhibit 1 to the</p> <p>25 Declaration of John Morris in Support</p>	<p style="text-align: right;">Page 129</p> <p>1 Confidential - Pugatch</p> <p>2 of Debtor's Motion for an Entry</p> <p>3 Approving Settlement with HarbourVest.</p> <p>4 BY MR. KANE:</p> <p>5 Q. Now, this Settlement Agreement</p> <p>6 is a document that you assisted in</p> <p>7 negotiations; is that correct?</p> <p>8 A. Correct.</p> <p>9 Q. Okay. And here in Section 1B,</p> <p>10 this addresses the transfer of the shares</p> <p>11 of the HarbourVest entities to a Debtor</p> <p>12 affiliate; is that correct?</p> <p>13 MS. WEISGERBER: Objection to</p> <p>14 form.</p> <p>15 A. Correct.</p> <p>16 Q. Is that your understanding,</p> <p>17 Mr. Pugatch?</p> <p>18 A. Yes, correct.</p> <p>19 Q. Okay. Thank you. Section 4A,</p> <p>20 and is this your understanding that</p> <p>21 HarbourVest is representing that it has</p> <p>22 the authority to enter into this agreement</p> <p>23 and to transfer the shares to the Debtor's</p> <p>24 affiliate if this is approved?</p> <p>25 MS. WEISGERBER: Objection to</p>

<p style="text-align: right;">Page 130</p> <p>1 Confidential - Pugatch</p> <p>2 form. The document speaks for itself.</p> <p>3 Is that a question, John?</p> <p>4 MR. KANE: Yeah. I asked if</p> <p>5 that was his understanding, that this</p> <p>6 is a representation by HarbourVest</p> <p>7 that it has the authority to transfer</p> <p>8 the shares if the Settlement Agreement</p> <p>9 is approved.</p> <p>10 MS. WEISGERBER: Objection to</p> <p>11 form. Objection to the extent it</p> <p>12 calls for a legal conclusion.</p> <p>13 To the extent you have a</p> <p>14 nonlegal conclusion, non-privileged</p> <p>15 understanding, Mike, you can share</p> <p>16 that.</p> <p>17 A. Yeah, I'm just saying I can only</p> <p>18 answer that based on conversations with</p> <p>19 counsel.</p> <p>20 MR. KANE: Okay. I won't push</p> <p>21 that. That's fine.</p> <p>22 Q. If we keep going down here as</p> <p>23 part of this attachment, there's a</p> <p>24 Transfer Agreement, Exhibit A to the</p> <p>25 Settlement Agreement. Are you familiar</p>	<p style="text-align: right;">Page 131</p> <p>1 Confidential - Pugatch</p> <p>2 with this document?</p> <p>3 A. Yes. I've seen it.</p> <p>4 Q. And did you assist with the</p> <p>5 preparation or negotiation of this</p> <p>6 Agreement?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Did you understand that</p> <p>9 HarbourVest would need the consent of the</p> <p>10 HCLOF portfolio advisor to effectuate the</p> <p>11 transfer?</p> <p>12 MS. WEISGERBER: Objection to</p> <p>13 form. Objection to the extent it</p> <p>14 calls for a legal conclusion.</p> <p>15 Mike, if you have a view other</p> <p>16 than from privileged conversation, you</p> <p>17 can answer, otherwise do not answer.</p> <p>18 A. Yeah, I'm sorry. I can only</p> <p>19 answer that based on conversation with</p> <p>20 counsel and the read of the document.</p> <p>21 Q. So to make sure I understand</p> <p>22 that, you have no independent</p> <p>23 understanding of whether or not consent</p> <p>24 was required from the portfolio manager</p> <p>25 before you could effectuate a transfer; is</p>
<p style="text-align: right;">Page 132</p> <p>1 Confidential - Pugatch</p> <p>2 that correct?</p> <p>3 MS. WEISGERBER: Same objection.</p> <p>4 I think you can give your</p> <p>5 general understanding, but then not</p> <p>6 get into specific conversations.</p> <p>7 A. My understanding of that is</p> <p>8 based on conversations with counsel, but</p> <p>9 yes, that is my understanding, John.</p> <p>10 Q. Okay. I'm going to highlight a</p> <p>11 passage here. Can you see this</p> <p>12 highlighted area? "Whereas, the Portfolio</p> <p>13 Manager desires to consent to such</p> <p>14 transfers and to the admission of</p> <p>15 Transferee as a shareholder..."</p> <p>16 Were you aware of that</p> <p>17 provision?</p> <p>18 MS. WEISGERBER: Objection to</p> <p>19 form.</p> <p>20 A. Yes. It's in the document.</p> <p>21 Q. Do you have any understanding of</p> <p>22 why that provision was included in this</p> <p>23 agreement?</p> <p>24 MS. WEISGERBER: Objection to</p> <p>25 form. Objection to the extent it</p>	<p style="text-align: right;">Page 133</p> <p>1 Confidential - Pugatch</p> <p>2 calls for a privileged conversation.</p> <p>3 A. As I answered before, based on</p> <p>4 conversations with counsel, my</p> <p>5 understanding is that consent is requiring</p> <p>6 in connection to transfer.</p> <p>7 Q. I'd like to turn your attention</p> <p>8 now – this is a document you've seen</p> <p>9 before during your deposition. This is</p> <p>10 the member's agreement related to the</p> <p>11 Company for HCLOF. This is previously</p> <p>12 produced by the Debtor, that's why it's</p> <p>13 got the Bates stamp on it. This is dated</p> <p>14 November 15, 2017.</p> <p>15 Are you familiar with this</p> <p>16 document?</p> <p>17 A. Yes.</p> <p>18 Q. Do you see on Line 14, in the</p> <p>19 between, on Page 1 shows Highland HCF</p> <p>20 Advisor, Ltd. as the portfolio manager?</p> <p>21 A. Yes, I see that.</p> <p>22 Q. I know there was quite a bit</p> <p>23 of – quite a few questions about this</p> <p>24 earlier, but you understand that Highland</p> <p>25 HCF Advisor, Ltd. is still the HCLOF</p>

<p style="text-align: right;">Page 134</p> <p>1 Confidential - Pugatch 2 portfolio manager? 3 MS. WEISGERBER: Objection to 4 form. 5 A. Honestly, I don't have -- I 6 don't have enough information to answer 7 that definitively. 8 Q. Okay. Going back to the 9 Settlement Agreement, there's a reference 10 in here to a defined term, "portfolio 11 manager." 12 Do you see that? 13 A. Yep. 14 Q. And is this the same one that's 15 listed in the Member Agreement, Highland 16 HCF Advisor, Ltd.? 17 A. I believe that seems to be the 18 position, yes. 19 Q. Okay. So when we're talking 20 about down here, "Whereas, the Portfolio 21 Manager desires to consent," this consent 22 provision is referring to the same 23 definition of portfolio manager that's 24 included in this Member Agreement; is that 25 correct?</p>	<p style="text-align: right;">Page 135</p> <p>1 Confidential - Pugatch 2 MR. MORRIS: Objection to the 3 form. 4 MS. WEISGERBER: Objection -- 5 same objections. Objection to the 6 extent it calls for privileged 7 information. 8 A. That sounds like a legal 9 conclusion. 10 Q. I would have thought it was 11 reading, Mr. Pugatch. 12 A. Well, if you're asking me to 13 definitively confirm that, that sounds 14 like a legal interpretation. 15 Q. Let me ask that a different way. 16 Do you understand that the 17 portfolio manager is listed as Highland 18 HCF Advisor, Ltd. in the Member Agreement? 19 A. Yes. 20 Q. And in this Transfer Agreement, 21 the portfolio manager is listed as 22 Highland HCF Advisor, Ltd.? 23 A. Yes. 24 Q. And those are the same entities? 25 A. Yes.</p>
<p style="text-align: right;">Page 136</p> <p>1 Confidential - Pugatch 2 Q. All right. Are you familiar 3 with Section 6 of this Member Agreement? 4 A. (Nods.) 5 Q. Have you ever read this 6 document? 7 A. I have. 8 Q. Okay. And can you give me your 9 understanding of what must take place 10 under this document for HarbourVest to 11 transfer its shares? 12 MS. WEISGERBER: Object to the 13 form. Object to the extent it calls 14 for a legal conclusion. Object to the 15 extent it calls for any privileged 16 information or conversations. 17 Mike, to the extent you have an 18 independent understanding, separate 19 from conversations with counsel, you 20 can answer the question. 21 A. I would say my understanding of 22 what's required in connection with the 23 transfer is based on conversations with 24 counsel. 25 Q. Do you believe that the</p>	<p style="text-align: right;">Page 137</p> <p>1 Confidential - Pugatch 2 HarbourVest entities can transfer its 3 shares without obtaining the consent of 4 the portfolio manager? 5 MS. WEISGERBER: Objection to 6 form. Objection to the extent it 7 calls for a legal conclusion. 8 Same instruction, Mike, as to 9 privileged conversations. 10 A. Again, my view on that would be 11 based on conversations with counsel. 12 Q. Are you aware of whether 13 HarbourVest provided any notice to other 14 members of its intent to transfer its 15 shares to the Debtor's affiliate under the 16 Settlement Agreement, other than the 17 filing of the 9019 motion? 18 MS. WEISGERBER: Same objection. 19 But there is a factual question in 20 there if you can answer it, Mike, but 21 no privileged conversation. 22 A. Yeah, I'm not aware of that. 23 Q. Did you provide members 30 days 24 after the receipt of notice of 25 HarbourVest's intent to transfer its</p>

<p style="text-align: right;">Page 138</p> <p>1 Confidential - Pugatch</p> <p>2 shares to the Debtor's affiliate and</p> <p>3 provide those members with an opportunity</p> <p>4 to purchase their pro rata amount of the</p> <p>5 shares?</p> <p>6 MS. WEISGERBER: Same objection.</p> <p>7 A. No.</p> <p>8 Q. And just to make sure I'm not</p> <p>9 asking this question in a way that you</p> <p>10 don't understand what I'm asking: Do you</p> <p>11 see this highlighted provision here?</p> <p>12 A. Yes.</p> <p>13 Q. I'm asking whether HarbourVest</p> <p>14 provided members 30 days after the receipt</p> <p>15 of a notice letter and an opportunity to</p> <p>16 purchase their entire pro rata share of</p> <p>17 the shares proposed to be transferred by</p> <p>18 the HarbourVest entities?</p> <p>19 MS. WEISGERBER: Objection to</p> <p>20 form. Objection to the extent it</p> <p>21 calls for privileged conversations or</p> <p>22 a legal conclusion. Objection to the</p> <p>23 extent it's asking about one piece of</p> <p>24 the document.</p> <p>25 And you're welcome to look at</p>	<p style="text-align: right;">Page 139</p> <p>1 Confidential - Pugatch</p> <p>2 the full document if you'd like, Mike.</p> <p>3 I think it was one of the ones that</p> <p>4 was E-mailed as well, or maybe you</p> <p>5 were able to pull it down.</p> <p>6 THE WITNESS: Yeah, no, I was.</p> <p>7 Thank you.</p> <p>8 A. And I'm sorry, John, could you</p> <p>9 just repeat the question?</p> <p>10 BY MR. KANE:</p> <p>11 Q. Yeah, sure, absolutely. And I'm</p> <p>12 not calling for any conversations with</p> <p>13 counsel. I'm asking you if you know</p> <p>14 whether HarbourVest did something or not.</p> <p>15 So let's -- let's keep it to that, because</p> <p>16 I --</p> <p>17 MR. KANE: Erica, I appreciate</p> <p>18 your concerns, but I really don't want</p> <p>19 to have any disclosures from Mike</p> <p>20 about his discussions with you on</p> <p>21 whether something needed to be done or</p> <p>22 not. I'm asking simply the facts of</p> <p>23 whether HarbourVest did it or not.</p> <p>24 Q. So did HarbourVest provide</p> <p>25 notice, 30 days' notice, to the members</p>
<p style="text-align: right;">Page 140</p> <p>1 Confidential - Pugatch</p> <p>2 listed under this Member Agreement of</p> <p>3 HarbourVest's intent to transfer the</p> <p>4 shares that are the subject to the</p> <p>5 Settlement Agreement?</p> <p>6 A. No.</p> <p>7 Q. Has HarbourVest provided any</p> <p>8 members with a right of first refusal and</p> <p>9 a cash purchase price for which it would</p> <p>10 sell its shares instead of transferring</p> <p>11 those shares to the Debtor or the Debtor's</p> <p>12 affiliate under the Settlement Agreement?</p> <p>13 MS. WEISGERBER: Same</p> <p>14 objections. Objection to form.</p> <p>15 Objection to extent it calls for a</p> <p>16 legal conclusion or privileged</p> <p>17 conversations, including -- regarding</p> <p>18 the specifics of that provision.</p> <p>19 I don't think that's a purely</p> <p>20 factual question.</p> <p>21 Q. Did HarbourVest offer to sell</p> <p>22 the shares to the other members? That's</p> <p>23 not a factual question?</p> <p>24 MS. WEISGERBER: Objection --</p> <p>25 A. On the basis of that factual</p>	<p style="text-align: right;">Page 141</p> <p>1 Confidential - Pugatch</p> <p>2 question, no.</p> <p>3 Q. So let me ask this question</p> <p>4 again, I don't recall if I got an answer</p> <p>5 or not.</p> <p>6 Did HarbourVest affirmatively</p> <p>7 seek to obtain the consent of Highland HCF</p> <p>8 Advisors to transfer its shares to the</p> <p>9 Debtor affiliate under the Settlement</p> <p>10 Agreement?</p> <p>11 MS. WEISGERBER: Same</p> <p>12 objections. Same instruction</p> <p>13 regarding the privileged conversation.</p> <p>14 A. I mean, as a Highland-affiliated</p> <p>15 entity, the Debtor, who's obviously the</p> <p>16 other party here involved in the transfer,</p> <p>17 you know, was involved in these</p> <p>18 discussions.</p> <p>19 Q. I'm sorry. Would you mind</p> <p>20 clarifying? Did you say that Highland HCF</p> <p>21 Advisors was involved in those discussions</p> <p>22 or the Debtor was involved in those</p> <p>23 discussions and you assume Highland HCF</p> <p>24 Advisors was?</p> <p>25 MS. WEISGERBER: Objection to</p>



<p style="text-align: right;">Page 142</p> <p>1 Confidential - Pugatch</p> <p>2 form. Misstates testimony.</p> <p>3 A. Sorry, could you just repeat the</p> <p>4 question, please, John?</p> <p>5 Q. Yes, Mr. Pugatch.</p> <p>6 I'm actually just trying to get</p> <p>7 some clarification from you, because I</p> <p>8 don't think I understood your answer</p> <p>9 about -- I had asked just -- again, I</p> <p>10 don't want any correspondence with your</p> <p>11 counsel or what your counsel advised, I'm</p> <p>12 asking: Do you know whether HarbourVest</p> <p>13 sought written consent from Highland HCF</p> <p>14 Advisor for its -- or to transfer its</p> <p>15 shares to the Debtor or the Debtor's</p> <p>16 affiliate under the Settlement Agreement?</p> <p>17 MS. WEISGERBER: Same objection.</p> <p>18 A. My understanding is HarbourVest</p> <p>19 did not explicitly have those</p> <p>20 conversations or seek that consent.</p> <p>21 Q. Okay. Are you aware of whether</p> <p>22 HarbourVest received any written consent</p> <p>23 from Highland HCF Advisors, other than</p> <p>24 what's in the Transfer Agreement attached</p> <p>25 to the Settlement Agreement?</p>	<p style="text-align: right;">Page 143</p> <p>1 Confidential - Pugatch</p> <p>2 A. I am not.</p> <p>3 MS. WEISGERBER: Same objection.</p> <p>4 Q. Do you know if HarbourVest has</p> <p>5 any written consent? Not just to seek it,</p> <p>6 but do you know if HarbourVest has a piece</p> <p>7 of paper, other than the transfer</p> <p>8 agreement, in which Highland HCF advisors</p> <p>9 provided its consent to the transfer of</p> <p>10 shares to the Debtor's affiliate?</p> <p>11 MS. WEISGERBER: Same</p> <p>12 objections.</p> <p>13 A. I would have to speak with</p> <p>14 counsel. I am not aware of that directly,</p> <p>15 no.</p> <p>16 Q. Are you aware of whether</p> <p>17 HarbourVest had any correspondence with</p> <p>18 HCLOF representatives about effectuating</p> <p>19 the transfer of the shares to the Debtor's</p> <p>20 affiliate under the Settlement Agreement?</p> <p>21 MS. WEISGERBER: Same objection.</p> <p>22 You can answer.</p> <p>23 A. We have had discussions with</p> <p>24 them, yes.</p> <p>25 Q. Did HCLOF representatives</p>
<p style="text-align: right;">Page 144</p> <p>1 Confidential - Pugatch</p> <p>2 provide consent, whether written or</p> <p>3 otherwise, to the transfer?</p> <p>4 A. I am not aware that that consent</p> <p>5 has been provided as of yet.</p> <p>6 Q. Are you aware of whether any</p> <p>7 HarbourVest representatives have had</p> <p>8 conversations with the Debtor's</p> <p>9 representatives about the necessity of</p> <p>10 consent to the transfer of their shares?</p> <p>11 MS. WEISGERBER: Objection to</p> <p>12 form --</p> <p>13 MR. KANE: I'll re-ask the</p> <p>14 question. I want to clarify that</p> <p>15 point.</p> <p>16 BY MR. KANE:</p> <p>17 Q. Mr. Pugatch, are you aware of</p> <p>18 whether any HarbourVest representatives</p> <p>19 had conversations with the Debtor's</p> <p>20 representatives about the necessity of</p> <p>21 obtaining the HCLOF portfolio manager's</p> <p>22 written consent before transferring the</p> <p>23 shares to the Debtor's representative or</p> <p>24 affiliate under the terms of the</p> <p>25 Settlement Agreement?</p>	<p style="text-align: right;">Page 145</p> <p>1 Confidential - Pugatch</p> <p>2 MS. WEISGERBER: Objection to</p> <p>3 form.</p> <p>4 And, John, I'm sorry to do this,</p> <p>5 can you just clarify what you mean by</p> <p>6 "representative"?</p> <p>7 MR. KANE: Yeah. I mean,</p> <p>8 anybody that has agency authority to</p> <p>9 act on behalf of the Debtor in</p> <p>10 negotiations, in the preparation of</p> <p>11 the documents, in negotiation of the</p> <p>12 terms of the Settlement Agreement.</p> <p>13 I mean, I think that it's, you</p> <p>14 know, a pretty broad term here.</p> <p>15 MS. WEISGERBER: Objection to</p> <p>16 form. Objection to the extent it</p> <p>17 calls for discussions with counsel.</p> <p>18 As a factual matter, if you have</p> <p>19 an answer, you can give it.</p> <p>20 A. I'm aware of conversations that</p> <p>21 have taken place about all of the terms of</p> <p>22 the Transfer Agreement in connection with</p> <p>23 the settlement, with all parties.</p> <p>24 Q. Is it your understanding based</p> <p>25 on those conversations that written</p>

<p style="text-align: right;">Page 146</p> <p>1 Confidential - Pugatch</p> <p>2 consent of the portfolio manager as</p> <p>3 defined in the Transfer Agreement was</p> <p>4 required before the shares could be</p> <p>5 transferred under the Settlement</p> <p>6 Agreement?</p> <p>7 MS. WEISGERBER: Objection to</p> <p>8 the form. Objection to the extent it</p> <p>9 calls for a legal conclusion or</p> <p>10 privileged conversation. And I think</p> <p>11 that one does, John.</p> <p>12 A. Yeah, I can only answer that</p> <p>13 based on conversation with lawyers.</p> <p>14 Q. Wasn't the question whether --</p> <p>15 I'm sorry. Maybe I forgot my own</p> <p>16 question.</p> <p>17 But I thought it was based on</p> <p>18 your conversations with the Debtor's</p> <p>19 representative, was it your understanding,</p> <p>20 not based on your conversation with</p> <p>21 counsel.</p> <p>22 MS. WEISGERBER: Can you repeat</p> <p>23 the whole question because I</p> <p>24 definitely misunderstood it then too.</p> <p>25 Q. Okay. Based on your</p>	<p style="text-align: right;">Page 147</p> <p>1 Confidential - Pugatch</p> <p>2 conversations with the Debtor's</p> <p>3 representatives, was it your understanding</p> <p>4 that the consent of the portfolio manager</p> <p>5 was required for the shares to be</p> <p>6 transferred from the HarbourVest entities</p> <p>7 to the Debtor's affiliate under the terms</p> <p>8 of the Settlement Agreement?</p> <p>9 MS. WEISGERBER: Okay. Same</p> <p>10 objections. Also objection to the</p> <p>11 extent there is a common interest</p> <p>12 privilege.</p> <p>13 A. I don't recall having that</p> <p>14 explicit conversation with representative</p> <p>15 of the Debtor.</p> <p>16 MR. KANE: I'll pass the</p> <p>17 witness.</p> <p>18 Thank you, Mr. Pugatch.</p> <p>19 MR. MORRIS: Anybody else?</p> <p>20 Thank you, all.</p> <p>21 MS. WEISGERBER: Can we --</p> <p>22 before we break, could we have a</p> <p>23 two-minute break and then come back</p> <p>24 before we conclude.</p> <p>25 BY MS. WEISGERBER:</p>
<p style="text-align: right;">Page 148</p> <p>1 Confidential - Pugatch</p> <p>2 Q. Mr. Pugatch, during Mr. Wilson's</p> <p>3 questioning, I believe his last question</p> <p>4 related to identifying as between two</p> <p>5 choices the primary source or the cause of</p> <p>6 HarbourVest's damages.</p> <p>7 In your opinion, is -- are</p> <p>8 HarbourVest damages attributable to any</p> <p>9 one cause?</p> <p>10 A. No, I would say there were</p> <p>11 multiple root causes of the damages and</p> <p>12 diminution in value that was suffered in</p> <p>13 connection with the investment.</p> <p>14 MS. WEISGERBER: Okay. I don't</p> <p>15 have any further questions.</p> <p>16 MR. WILSON: I think I'd like to</p> <p>17 ask a couple more.</p> <p>18 BY MR. WILSON:</p> <p>19 Q. Mr. Pugatch, I think you</p> <p>20 testified earlier that the investment in</p> <p>21 HCLOF was comprised of multiple CLOs,</p> <p>22 correct?</p> <p>23 A. Correct.</p> <p>24 Q. And some of those CLOs were</p> <p>25 managed by Acis, to your understanding?</p>	<p style="text-align: right;">Page 149</p> <p>1 Confidential - Pugatch</p> <p>2 MS. WEISGERBER: Objection.</p> <p>3 A. Correct.</p> <p>4 MS. WEISGERBER: Just to</p> <p>5 clarify, John, is this within the</p> <p>6 scope of the questions I asked</p> <p>7 Mr. Pugatch?</p> <p>8 MR. WILSON: I believe it is.</p> <p>9 I'm going to be really short. But</p> <p>10 so --</p> <p>11 MS. WEISGERBER: I would like to</p> <p>12 have a standing objection to the</p> <p>13 extent it's not within the scope of</p> <p>14 the questions that was asked to</p> <p>15 Mr. Pugatch.</p> <p>16 BY MR. WILSON:</p> <p>17 Q. So some of those CLOs you</p> <p>18 contend are managed by Acis?</p> <p>19 MS. WEISGERBER: Objection to</p> <p>20 form.</p> <p>21 A. A majority.</p> <p>22 Q. And just generally, do you</p> <p>23 contend that Highland managed the balance</p> <p>24 of those CLOs?</p> <p>25 MR. MORRIS: Objection to the</p>

<p style="text-align: right;">Page 150</p> <p>1 Confidential - Pugatch</p> <p>2 form of the question.</p> <p>3 MS. WEISGERBER: Objection.</p> <p>4 Same objection.</p> <p>5 A. Yes.</p> <p>6 Q. Yes. Okay. Thank you.</p> <p>7 And I just had two more</p> <p>8 questions.</p> <p>9 So, if there was going to be a</p> <p>10 reset, that would have to be done at the</p> <p>11 CLO level, each CLO would have to be</p> <p>12 reset?</p> <p>13 MR. MORRIS: Objection.</p> <p>14 MS. WEISGERBER: Objection to</p> <p>15 form.</p> <p>16 A. That is correct.</p> <p>17 Q. And do you know of any specific</p> <p>18 CLO that requested a reset but was not</p> <p>19 granted a reset?</p> <p>20 MR. MORRIS: Objection to form.</p> <p>21 MS. WEISGERBER: Same objection.</p> <p>22 And foundation.</p> <p>23 A. When you say "CLOs who requested</p> <p>24 a reset," can be more clear, please?</p> <p>25 Q. We just talked about how this</p>	<p style="text-align: right;">Page 151</p> <p>1 Confidential - Pugatch</p> <p>2 investment is comprised of multiple CLOs</p> <p>3 and each one of those CLOs would have to</p> <p>4 be reset, according to its own terms, I</p> <p>5 guess. Do you know of any one of those</p> <p>6 CLOs that requested a reset?</p> <p>7 MR. MORRIS: Objection to the</p> <p>8 form of the question.</p> <p>9 MS. WEISGERBER: Same objection.</p> <p>10 A. I'm aware of Highland having in</p> <p>11 its capacity as manager of the HCLOF</p> <p>12 having requested or pursued resets of</p> <p>13 certain of the Acis HCLOs.</p> <p>14 Q. Your understanding is that</p> <p>15 Highland requested a reset of the Acis</p> <p>16 CLOs?</p> <p>17 MS. WEISGERBER: Objection to</p> <p>18 form.</p> <p>19 A. I'm sorry. I'm trying to</p> <p>20 understand what you said.</p> <p>21 MS. WEISGERBER: I'm really</p> <p>22 wondering how this relates at all to</p> <p>23 the scope of the questions I asked Mr.</p> <p>24 Pugatch on follow up.</p> <p>25 I think it's time to wrap this</p>
<p style="text-align: right;">Page 152</p> <p>1 Confidential - Pugatch</p> <p>2 up, John.</p> <p>3 MR. WILSON: This was my last</p> <p>4 question, I just need an answer to it.</p> <p>5 And I think he tried to answer, but I</p> <p>6 didn't understand what he said.</p> <p>7 MS. WEISGERBER: Objection. Can</p> <p>8 you re-ask the question so we have a</p> <p>9 clear question.</p> <p>10 MR. WILSON: Well, Madam Court</p> <p>11 Reporter, can you read back his last</p> <p>12 response?</p> <p>13 (Record read.)</p> <p>14 BY MR. WILSON:</p> <p>15 Q. Can you repeat what you intended</p> <p>16 to answer to the last question?</p> <p>17 MS. WEISGERBER: Same objection.</p> <p>18 If you recall, Mike.</p> <p>19 A. I'm sorry, John. Can you just</p> <p>20 repeat the question, please, make sure I'm</p> <p>21 answering what you want me to answer.</p> <p>22 Q. My question is the same as it's</p> <p>23 been: Are you aware of any CLO that</p> <p>24 requested a reset and was not granted one?</p> <p>25 MS. WEISGERBER: Objection to</p>	<p style="text-align: right;">Page 153</p> <p>1 Confidential - Pugatch</p> <p>2 form. Objection to foundation.</p> <p>3 MR. MORRIS: Objection to the</p> <p>4 form of the question.</p> <p>5 A. Again, my understanding is the</p> <p>6 CLOs do not request the reset. Highland,</p> <p>7 as manager of HCLOF in its capacity as</p> <p>8 majority equity owner of certain of the</p> <p>9 CLOs, have requested a reset post our</p> <p>10 original investment.</p> <p>11 Q. Okay.</p> <p>12 MR. WILSON: I'll pass the</p> <p>13 witness.</p> <p>14 MS. WEISGERBER: I think we're</p> <p>15 done.</p> <p>16 THE REPORTER: Will everyone put</p> <p>17 their orders on the record, please?</p> <p>18 MR. MORRIS: John Morris for the</p> <p>19 Debtor. Expedited, please.</p> <p>20 MR. WILSON: John Wilson. I'm</p> <p>21 not sure what arrangements my office</p> <p>22 has previously made, but we want an</p> <p>23 expedited transcript, as well.</p> <p>24 THE REPORTER: Do you want a</p> <p>25 rough too?</p>



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1 Confidential - Pugatch  
2 MR. WILSON: Yes, please.  
3 MR. MORRIS: Yes, please.  
4 MS. WEISGERBER: Same for  
5 HarbourVest, please.  
6 MR. MALONEY: I don't need an  
7 expedited transcript. I'd just be  
8 happy to get one regular copy. I'll  
9 take whatever you would produce in the  
10 ordinary course. Same as what  
11 everyone else ordered.  
12 (Time Noted: 4:35 p.m. EDT.)  
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1  
2 CERTIFICATE OF SHORTHAND REPORTER-NOTARY  
3 PUBLIC  
4 I, Amanda Gorrono, the officer  
5 before whom the foregoing deposition  
6 was taken, do hereby certify that the  
7 foregoing transcript is a true and  
8 correct record of the testimony given;  
9 that said testimony was taken by me  
10 stenographically and thereafter  
11 reduced to typewriting under my  
12 direction; and that I am neither  
13 counsel for, related to, nor employed  
14 by any of the parties to this case and  
15 have no interest, financial or  
16 otherwise, in its outcome.  
17 IN WITNESS WHEREOF, I have  
18 hereunto set my hand this 12th day of  
19 January, 2021.  
20  
21 \_\_\_\_\_  
22 AMANDA GORRONO, CLR  
23 CLR NO: 052005 - 01  
24 Notary Public in and for the State of New  
25 York  
County of Suffolk

Page 155

1  
2 ACKNOWLEDGEMENT OF DEPONENT  
3  
4 I, MICHAEL PUGATCH, do hereby  
5 acknowledge that I have read and  
6 examined the foregoing testimony, and  
7 the same is a true, correct and  
8 complete transcription of the  
9 testimony given by me, and any  
10 corrections appear on the attached  
11 Errata sheet signed by me.  
12  
13  
14 \_\_\_\_\_  
15 (DATE) (SIGNATURE)  
16  
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1 ERRATA SHEET  
2 Case Name:  
3 Deposition Date:  
4 Deponent:  
5 Pg. No. Now Reads Should Read Reason  
6 \_\_\_\_\_  
7 \_\_\_\_\_  
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20  
21 \_\_\_\_\_  
22 Signature of Deponent  
23 SUBSCRIBED AND SWORN BEFORE ME  
24 THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.  
25 (Notary Public) MY COMMISSION EXPIRES: \_\_\_\_\_

Index: \$1,570,429..additional

<b>\$</b>	<b>11/29/2017</b> 79:3	<b>2020</b> 16:12 59:3 109:21 112:13	<b>49.98</b> 27:16 65:20 66:3	<b>accept</b> 110:17
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<b>\$1.02</b> 112:19	<b>122</b> 61:9	<b>23</b> 109:20	<b>4A</b> 129:19	<b>accurate</b> 33:14 93:24
<b>\$135</b> 28:25 30:2	<b>135</b> 28:10	<b>27</b> 51:20 52:21	<b>5</b>	<b>accusations</b> 81:7
<b>\$150</b> 112:23	<b>14</b> 33:10 133:18	<b>27th</b> 51:19	<b>5</b> 16:16 22:15,16,17 37:13,21,22 45:11 95:11 96:24 110:14	<b>Acis</b> 31:22,23,24 32:4,5,12,14,24 35:2 36:11,13,24 46:10, 15,21 47:9,14,22 48:11 49:4,10,14,20 50:2,11 51:11 52:21 53:4,5 74:3 84:5 85:16 86:19,23 87:4, 13,22 88:7,11,19 89:11 90:8,17 91:2,6, 20 92:4,5,7,8,14,15, 20 93:3,18 94:12 96:5,6,7,10,11,22 97:3 101:15 104:13 105:9 107:15,23 108:3 114:6,21 115:6,20 116:23 118:16 121:6 148:25 149:18 151:13,15
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<b>\$295,000</b> 93:23 94:22 95:7 104:14	<b>144</b> 14:22	<b>28th</b> 81:17	<b>6</b>	<b>Acis-branded</b> 35:6
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